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code of federal regulations

Aliens and Nationality

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324

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Revised as of January 1, 1986

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thus: **8 CFR 1.1**

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16	as of January 1
Title 17 through Title 27	as of April 1
Title 28 through Title 41	as of July 1
Title 42 through Title 50	as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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JOHN E. BYRNE,
Director,
Office of the Federal Register.

January 2, 1986

THIS TITLE

Title 8—Aliens and Nationality is composed of one volume. The contents of this volume represent all current regulations issued by the Immigration and Naturalization Service as of January 1, 1986.

For this volume Ina C. Masters was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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VIII

Title 8—Aliens and Nationality

Part

CHAPTER I—Immigration and Naturalization Service, Department of Justice 1

NOTE: Other regulations issued by the Department of Justice appear in Title 4, Chapter II, Title 21, Chapter II, and Title 28, Chapters I, III and V.

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CHAPTER I—IMMIGRATION AND NATURALIZATION SERVICE, DEPARTMENT OF JUSTICE

CROSS REFERENCE: For State Department regulations pertaining to visas and Nationality and Passports, see 22 CFR, Chapter I, Subchapters E and F.

NOTE: This table shows sections of Title 8 of the United States Code and corresponding sections of the Immigration and Nationality Act and of parts in Subchapters A, B, and C of Chapter I of Title 8 of the Code of Federal Regulations. Those sections of Title 8 of the United States Code bearing an asterisk do not have a corresponding part in Chapter I of Title 8 of the Code of Federal Regulations.

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SUBCHAPTER A—GENERAL PROVISIONS

PART 1—DEFINITIONS

§ 1.1 Definitions.

As used in this chapter:

(a) The terms defined in section 101 of the Immigration and Nationality Act (66 Stat. 163) shall have the meanings ascribed to them in that section and as supplemented, explained, and further defined in this chapter.

(b) The term "Act" means the Immigration and Nationality Act, as amended.

(c) The term "Service" means the Immigration and Naturalization Service.

(d) The term "Commissioner" means the Commissioner of Immigration and Naturalization.

(e) The term "Board" means the Board of Immigration Appeals.

(f) The term "attorney" means any person who is a member in good standing of the bar of the highest court of any State, possession, territory, Commonwealth, or the District of Columbia, and is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law.

(g) Unless the context otherwise requires, the term "case" means any proceeding arising under any immigration or naturalization law, Executive order, or Presidential proclamation, or preparation for or incident to such proceeding, including preliminary steps by any private person or corporation preliminary to the filing of the application or petition by which any proceeding under the jurisdiction of the Service or the Board is initiated.

(h) The term "day" when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Sundays and legal holidays, except that when the last day of the period so computed falls on a Sunday or a legal holiday, the period shall run until the end of the next day which is neither a Sunday nor a legal holiday.

(i) The term "practice" means the act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with the Service, or any officer of the Service, or the Board.

(j) The term "representative" refers to a person who is entitled to represent others as provided in § 292.1(a) (2), (3), (4), (5), (6), and § 292.1(b) of this chapter.

(k) The term "preparation," constituting practice, means the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers, but does not include the lawful functions of a notary public or service consisting solely of assistance in the completion of blank spaces on printed Service forms by one whose remuneration, if any, is nominal and who does not hold himself out as qualified in legal matters or in immigration and naturalization procedure.

(l) The term "immigration judge" means special inquiry officer and may be used interchangeably with the term special inquiry officer wherever it appears in this chapter.

(m) The term "representation" before the Board and the Service includes practice and preparation as defined in paragraphs (i) and (k) of this section.

(n) The term "Executive Office" means Executive Office for Immigration Review.

(Sec. 103, 66 Stat. 173; 8 U.S.C. 1103; 28 U.S.C. 509, 510; 5 U.S.C. 301)

[23 FR 9115, Nov. 26, 1958, as amended at 30 FR 14772, Nov. 30, 1965; 34 FR 12213, July 24, 1969; 38 FR 8590, Apr. 4, 1973; 40 FR 23271, May 29, 1975; 48 FR 8039, Feb. 25, 1983]

PART 2—AUTHORITY OF THE COMMISSIONER

§ 2.1 Authority of the Commissioner.

Without divesting the Attorney General of any of his powers, privileges, or duties under the immigration and naturalization laws, and except as to the Executive Office, the Board, the Office of the Chief Special Inquiry Officer, and Special Inquiry Officers, there is delegated to the Commissioner the authority of the Attorney General to direct the administration of the Service and to enforce the Act and all other laws relating to the immigration and naturalization of aliens. The Commissioner may issue regulations as deemed necessary or appropriate for the exercise of any authority delegated to him by the Attorney General, and may redelegate any such authority to any other officer or employee of the Service.

(28 U.S.C. 509, 510; 5 U.S.C. 301; 8 U.S.C. 1103)

[48 FR 8039, Feb. 25, 1983]

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Sec.

3.0 Executive Office for Immigration Review.

Subpart A—Board of Immigration Appeals

3.1 General authorities.
3.2 Reopening or reconsideration.
3.3 Notice of appeal.
3.4 Withdrawal of appeal.
3.5 Forwarding of record on appeal.
3.6 Stay of execution of decision.
3.7 Notice of certification.
3.8 Motion to reopen or motion to reconsider.

Subpart B—Office of the Chief Special Inquiry Officer

3.9 Chief Special Inquiry Officer.
3.10 Special Inquiry Officers.

AUTHORITY: Secs. 103, 292, 66 Stat. 173, 235; 8 U.S.C. 1103, 1362, sec. 2, Reorg. Plan No. 2 of 1950, 15 FR 3173, 3 CFR, 1949-1953 Comp., p. 1003, unless otherwise noted.

§ 3.0 Executive Office for Immigration Review.

The Executive Office for Immigration Review shall be headed by a Director, who shall be responsible for the general supervision of the Board of Immigration Appeals and the Office of the Chief Special Inquiry Officer in the execution of their duties in accordance with 8 CFR Part 3. The Director may redelegate the authority delegated to him by the Attorney General to the Chairman of the Board of Immigration Appeals or the Chief Special Inquiry Officer. The Director shall be assisted in the performance of his duties by an Executive Assistant.

(28 U.S.C. 509, 510; 5 U.S.C. 301; 8 U.S.C. 1103)

[48 FR 8039, Feb. 25, 1983]

Subpart A—Board of Immigration Appeals.

§ 3.1 General authorities.

(a)(1) *Organization.* There shall be in the Department of Justice a Board of Immigration Appeals, subject to the general supervision of the Director, Executive Office for Immigration Review. The Board shall exercise so much of the immigration and nationality laws as he may delegate to it. The Board shall consist of a Chairman and four other members. A vacancy, or the absence or unavailability of a Board Member, shall not impair the right of the remaining members to exercise all the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board. There shall also be attached to the Board such number of attorneys and other employees as the Associate Attorney General, upon recommendation of the Chairman, shall from time to time direct.

(2) *Chairman.* The Chairman shall direct, supervise, and establish internal operating procedures and policies of the Board. He shall designate a member of the Board to act as Chairman in his absence or unavailability. The Chairman shall be assisted in the performance of his duties by a Chief Attorney Examiner, who shall be directly responsible to the Chairman. The Chief Attorney Examiner shall serve as an Alternate Board Member when, in the absence or unavailability of a Board Member or Members, his participation is deemed necessary by the Chairman. Once designated, his participation in a case shall continue to its normal conclusion.

(3) *Board Members.* Board Members shall perform the quasi-judicial function of adjudicating cases coming before the Board.

(b) *Appellate jurisdiction.* Appeals shall lie to the Board of Immigration Appeals from the following:

(1) Decisions of special inquiry officers in exclusion cases, as provided in Part 236 of this chapter.

(2) Decisions of special inquiry officers in deportation cases, as provided in Part 242 of this chapter, except that no appeal shall lie from an order of a special inquiry officer under § 244.1 of this chapter granting voluntary departure within a period of at least 30 days, if the sole ground of appeal is that a greater period of departure time should have been fixed.

(3) Decisions on applications for the exercise of the discretionary authority contained in section 212(c) of the act, as provided in Part 212 of this chapter.

(4) Decisions involving administrative fines and penalties, including mitigation thereof, as provided in Part 280 of this chapter.

(5) Decisions on petitions filed in accordance with section 204 of the act (except petitions to accord preference classifications under section 203(a)(3) or section 203(a)(6) of the act, or a petition on behalf of a child described in section 101(b)(1)(F) of the act), and decisions on requests for revalidation and decisions revoking the approval of such petitions, in accordance with section 205 of the act, as provided in Parts 204 and 205, respectively, of this chapter.

(6) Decisions on applications for the exercise of the discretionary authority contained in section 212(d)(3) of the act as provided in Part 212 of this chapter.

(7) Determinations relating to bond, parole, or detention of an alien as provided in Part 242 of this chapter.

(8) Decisions of special inquiry officers in rescission of adjustment of status cases, as provided in Part 246 of this chapter.

(c) *Jurisdiction by certification.* The Commissioner, or any other duly authorized officer of the Service, any Special Inquiry Officer, or the Board may in any case arising under paragraph (b) of this section require certification of such case to the Board.

(d) *Powers of the Board*—(1) *Generally.* Subject to any specific limitation prescribed by this chapter, in considering and determining cases before it as provided in this part the Board shall exercise such discretion and authority conferred upon the Attorney General by law as is appropriate and necessary for the disposition of the case.

(1-a) *Summary dismissal of appeals.* The Board may summarily dismiss any appeal in any case in which (i) the party concerned fails to specify the reasons for his appeal on Form I-290A (Notice of Appeal); (ii) the only reason specified by the party concerned for his appeal involves a finding of fact or a conclusion of law which was conceded by him at the deportation or exclusion hearing; (iii) the appeal is from an order that granted the party concerned the relief which he requested, or (iv) the Board is satisfied, from a review of the record, that the appeal is frivolous or filed solely for the purpose of delay.

(2) *Finality of decision.* The decision of the Board shall be final except in those cases reviewed by the Attorney General in accordance with paragraph (h) of this section. The Board may return a case to the Service or Special Inquiry Officer for such further action as may be appropriate, without entering a final decision on the merits of the case.

(3) *Rules of practice: Discipline of attorneys and represenatives.* The Board shall have authority, with the approval of the Director, EOIR, to prescribe rules governing proceedings before it. It shall also determine whether any organization desiring representation is of a kind described in § 1.1(j) of this chapter, and shall regulate the conduct of, and may disbar for cause, attorneys, representatives of organizations, and others who appear in a representative capacity before the Board or the Service or any Special Inquiry Officer.

(e) *Oral Argument.* When an appeal has been taken, request for oral argument if desired shall be included in the Notice of Appeal. Oral argument shall be heard at the discretion of the Board at such date and time as the Board shall fix. The Service may be represented before the Board by an officer of the Service designated by the Service.

(f) *Service of Board decisions.* The decision of the Board shall be in writing and copies thereof shall be transmitted by the Board to the Service and a copy shall be served upon the alien or party affected as provided in Part 292 of this chapter.

(g) *Decisions of the Board as precedents.* Except as they may be modified or overruled by the Board or the Attorney General, decisions of the Board shall be binding on all officers and employees of the Service or Special Inquiry Officers in the administration of the Act, and selected decisions designated by the Board shall serve as precedents in all proceedings involving the same issue or issues.

(h) *Referral of cases to the Attorney General.* (1) The Board shall refer to the Attorney General for review of its decision all cases which:

(i) The Attorney General directs the Board to refer to him.

(ii) The Chairman or a majority of the Board believes should be referred to the Attorney General for review.

(iii) The Commissioner requests be referred to the Attorney General for review.

(2) In any case in which the Attorney General reviews the decision of the Board, the decision of the Attorney General shall be stated in writing and shall be transmitted to the Board for transmittal and service as provided in paragraph (f) of this section.

(28 U.S.C. 509, 510; 5 U.S.C. 301; 8 U.S.C. 1103)

[23 FR 9117, Nov. 26, 1958, as amended at 27 FR 96, Jan. 5, 1962; 27 FR 10789, Nov. 6, 1962; 30 FR 14772, Nov. 30, 1965; 36 FR 316, Jan. 9, 1971; 40 FR 37207, Aug. 26, 1975; 44 FR 67960, Nov. 28, 1979; 47 FR 16772, Apr. 20, 1982; 48 FR 8039, Feb. 25, 1983]

§ 3.2 Reopening or reconsideration.

The Board may on its own motion reopen or reconsider any case in which it has rendered a decision. Reopening or reconsideration of any case in which a decision has been made by the Board, whether requested by the Commissioner or any other duly authorized officer of the Service, or by the party affected by the decision, shall be only upon written motion to the Board. Motions to reopen in deportation proceedings shall not be granted unless it appears to the Board that evidence sought to be offered is material and was not available and could not have been discovered or presented at the former hearing; nor shall any motion to reopen for the purpose of affording the alien an opportunity to apply for any form of discretionary relief be granted if it appears that the alien's right to apply for such relief was fully explained to him and an opportunity to apply therefor was afforded him at the former hearing unless the relief is sought on the basis of circumstances which have arisen subsequent to the hearing. A motion to reopen or a motion to reconsider shall not be made by or in behalf of a person who is the subject of deportation proceedings subsequent to his departure from the United States. Any departure from the United States of a person who is the subject of deportation proceedings occurring after the making of a motion to reopen or a motion to reconsider shall constitute a withdrawal of such motion. For the purpose of this section, any final decision made by the Commissioner prior to the effective date of the Act with respect to any case within the classes of cases enumerated in § 3.1(b) (1), (2), (3), (4), or (5) shall be regarded as a decision of the Board.

[27 FR 96, Jan. 5, 1962]

§ 3.3 Notice of appeal.

(a) A party affected by a decision who is entitled under this chapter to appeal to the Board shall be given notice of his right to appeal.• An appeal shall be taken by filing Notice of Appeal, Form I-290A, in triplicate, with the officer of the Service having administrative jurisdiction over the case, within the time specified in the governing sections of this chapter. The certification of a case as provided in this part shall not relieve the party affected from compliance with the provisions of this section in the event that he is entitled, and desires, to appeal from an initial decision, nor shall it serve to extend the time specified in the applicable parts of this chapter for the taking of an appeal. Departure from the United States of a person under deportation proceedings prior to the taking of an appeal from a decision in his case shall constitute a waiver of his right to appeal.

(b) *Fees.* Except as otherwise provided in this section, a notice of appeal or a motion filed under this part by any person other than an officer of the Service shall be accompanied by the appropriate fee specified by, and remitted in accordance with, the provisions of § 103.7 of this chapter. In any case in which an alien or other party affected is unable to pay the fee fixed for an appeal or a motion, he shall file with the notice of appeal or the motion of his affidavit stating the nature of the motion or appeal, his belief that he is entitled to redress, and his inability to pay the required fee, and shall request permission to prosecute the appeal or motion without prepayment of such fee. When such an affidavit is filed with the officer of the Service from whose decision the appeal is taken or with respect to whose decision the motion is addressed, such officer shall, if he believes that the appeal or motion is not taken or made in good faith, certify in writing his reasons for such belief for consideration by the Board. The Board may, in its discretion, authorize the prosecution of any appeal or motion without prepayment of fee.

(c) *Briefs.* Briefs in support of or in opposition to an appeal shall be filed in triplicate with the officer of the Service having administrative jurisdiction over the case within the time fixed for appeal or within any other additional period designated by the Special Inquiry Officer or Service Officer* who made the decision. Such Special Inquiry Officer or the Board for good cause may extend the time for filing a brief or reply brief. The Board in its discretion may authorize the filing of briefs directly with it, in which event the opposing party shall be allowed a specified time to respond.

(28 U.S.C. 509, 510; 5 U.S.C. 301; 8 U.S.C. 1103)

[23 FR 9118, Nov. 26, 1958, as amended by Order No. 325-64, 29 FR 14717, Oct. 29, 1964; 48 FR 8040, Feb. 25, 1983]

§ 3.4 Withdrawal of appeal.

In any case in which an appeal has been taken, the party taking the appeal may file a written withdrawal thereof with the officer with whom the notice of appeal was filed. If the appeal has been taken by a trial attorney, such written withdrawal may be made by the district director or regional commissioner having administrative jurisdiction over the case or by the General Counsel. If the record in the case has not been forwarded to the Board on appeal in accordance with § 3.5 the decision made in the case shall be final to the same extent as though no appeal had been taken. If the record has been forwarded on appeal, the withdrawal of the appeal shall be forwarded to the Board and, if no decision in the case has been made on the appeal, the record shall be returned, and the initial decision shall be final to the same extent as though no appeal had been taken. If a decision on the appeal shall have been made by the Board in the case, further action shall be taken in accordance therewith. Departure from the United States of a person who is the subject to deportation proceedings subsequent to the taking of an appeal but prior to a decision thereon shall constitute a withdrawal of the appeal, and the initial decision in the case shall be final to the same extent as though no appeal had been taken.

[29 FR 2692, Feb. 26, 1964]

§ 3.5 Forwarding of record on appeal.

If an appeal is taken from a decision, as provided in this chapter, the entire record of the proceeding shall be forwarded to the Board by the office having administrative jurisdiction over the case upon timely receipt of the briefs of the parties, or upon expiration of the time allowed for the submission of such briefs. A district director need not forward an appeal to the Board, but may reopen and reconsider any decision made by the director when an appeal to the Board has been filed, if the district director's new decision will grant the benefit which has been requested; provided that the district director's new decision is served on the appealing party within 45 days of receipt of any briefs or upon expiration of the time allowed for the submission of any briefs. If the district director's new decision is not served within these time limits or the appealing party will not agree that the new decision disposes of the matter, the record of proceeding shall be immediately forwarded to the Board.

[48 FR 52432, Nov. 18, 1983]

§ 3.6 Stay of execution of decision.

(a) Except as provided in § 242.2 of this chapter and paragraph (b) of this section, the decision in any proceeding under this chapter from which an appeal to the Board may be taken shall not be executed during the time allowed for the filing of an appeal unless a waiver of the right to appeal is filed, nor shall such decision be executed while an appeal is pending or while a case is before the Board by way of certification.

(b) The provisions of paragraph (a) of this section shall not apply to an order of a special inquiry officer under § 242.22 of this chapter denying a motion to reopen or reconsider or to stay deportation, except when a stay pending appeal has been granted by the special inquiry officer. The Board may, in its discretion, stay deportation while an appeal is pending from any such order if no stay has been granted by the special inquiry officer.

(c) *Saving clause.* Notwithstanding the provisions of paragraph (b) of this section, any stay of execution of decision existing under paragraph (a) of this section when paragraph (b) of this section becomes effective shall continue until the Board has disposed of the appeal.

[36 FR 316, Jan. 9, 1971]

§ 3.7 Notice of certification.

Whenever in accordance with the provisions of § 3.1(c) a case is required to be certified to the Board, the alien or other party affected shall be given notice of certification. A case shall be certified only after an initial decision has been made and before an appeal has been taken. If it is known at the time the initial decision is made that the case will be certified, the notice of certification shall be included in such decision and no further notice of certification shall be required. If it is not known until after the initial decision is made that the case will be certified, the officer of the Service having administrative jurisdiction over the case shall cause a Notice of Certification (Form I-290C) to be served upon the party affected. In either case the notice shall inform the party affected that the case is required to be certified to the Board and that he has the right to make representation before the Board, including the making of oral argument and the submission of a brief. If the party affected desires to submit a brief, it shall be submitted to the officer of the Service having administrative jurisdiction over the case for transmittal to the Board within ten days from the date of receipt of the notice of certification, unless for good cause shown such officer or the Board extends the time within which the brief may be submitted. The case shall be certified and forwarded to the Board by the officer of the Service having administrative jurisdiction over the case upon receipt of the brief, or upon the expiration of the time within which the brief may be submitted, or upon receipt of a written waiver of the right to submit a brief.

[23 FR 9118, Nov. 26, 1958]

§ 3.8 Motion to reopen or motion to reconsider.

(a) *Form.* Motions to reopen and motions to reconsider shall be submitted in triplicate. A request for oral argument, if desired, shall be incorporated in the motion. The Board in its discretion may grant or deny oral argument. Motions to reopen shall state the new facts to be proved at the reopened hearing and shall be supported by affidavits or other evidentiary material. Motions to reconsider shall state the reasons upon which the motion is based and shall be supported by such precedent decisions as are pertinent. In any case in which a deportation order is in effect, there shall be included in the motion to reopen or reconsider such order a statement by or on behalf of the moving party declaring whether the subject of the deportation order is also the subject of any pending criminal proceeding under section 242(e) of the Act, and, if so, the current status of that proceeding.

If the motion to reopen or reconsider is for the purpose of seeking discretionary relief, there shall be included in the motion a statement by or on behalf of the moving party declaring whether the alien for whose relief the motion is filed is subject to any pending criminal prosecution and, if so, the nature and current status of that prosecution. Motions to reopen or reconsider shall state whether the validity of the deportation order has been or is the subject of any judicial proceeding and, if so, the nature and date thereof, the court in which such proceeding took place or is pending, and its result or status. The filing of a motion to reopen or a motion to reconsider shall not serve to stay the execution of any decision made in the case. Execution of such decision shall proceed unless a stay of execution is specifically granted by the Board or the officer of the Service having administrative jurisdiction over the case.

(b) *Distribution of motion papers when alien is moving party.* In any case in which a motion to reopen or a motion to reconsider is made by the alien or other party affected, the three copies of the motion papers shall be submitted to the officer of the Service having administrative jurisdiction over the place where the proceedings were conducted. Such officer shall retain one copy, forward one copy to the officer of the Service or Special Inquiry Officer who made the initial decision in the case, and submit the third copy with the case to the Board.

(c) *Distribution of motion papers when the Commissioner, or any other duly authorized officer of the Service is the moving party.* Whenever a motion to reopen or a motion to reconsider is made by the Commissioner or any other duly authorized officer of the Service, he shall cause one copy of the motion to be served upon the alien or party affected, as provided in Part 292 of this chapter, and shall cause the record in the case and one copy of the motion to be filed directly with the Board, together with proof of service upon the alien or other party affected. Such alien or party shall have a period of ten days from the date of service upon him of the motion within which he may apply, if he so desires, submit a brief in opposition to the motion. If such a brief is submitted, two copies thereof shall be filed directly with the Board and one copy directly with the Commissioner. The Board, in its discretion for good cause shown may extend the time within which such brief may be submitted.

(d) *Ruling on motion.* Rulings upon motions to reopen or motions to reconsider shall be by written order. If the order directs a reopening, the record shall be returned to the officer of the Service having administrative jurisdiction over the place where the reopened proceedings are to be conducted. If the motion to reconsider is granted, the decision upon such reconsideration shall affirm, modify, or reverse the original decision made in the case.

(28 U.S.C. 509, 510; 5 U.S.C. 301; 8 U.S.C. 1103)

[23 FR 9118, Nov. 26, 1958, as amended at 27 FR 7488, July 31, 1962; 48 FR 8040, Feb. 25, 1983]

Subpart B—Office of the Chief Special Inquiry Officer

AUTHORITY: 28 U.S.C. 509, 510; 5 U.S.C. 301; 8 U.S.C. 1103.

SOURCE: 48 FR 8040, Feb. 25, 1983, unless otherwise noted.

§ 3.9 Chief Special Inquiry Officer.

The Chief Special Inquiry Officer shall be reponsible for the general supervision, direction and scheduling of the Special Inquiry Officers in the conduct of the various programs assigned to them. This shall include:

(a) Establishment of operational policies;

(b) Evaluation of the performance of Special Inquiry Officer offices, making appropriate reports and inspections and taking corrective action where indicated.

§ 3.10 Special Inquiry Officers.

Special Inquiry Officers shall exercise the powers and duties in this chapter regarding the conduct of exclusion and deportation hearings and such other proceedings which the Attorney General may assign them to conduct.

SUBCHAPTER B—IMMIGRATION REGULATIONS

PART 100—STATEMENT OF ORGANIZATION

Sec.
100.1 Introduction.
100.2 Organization and functions.
100.3 Places where, and methods whereby, information may be secured or submittals or requests made.
100.4 Field Service.
100.5 Regulations.
100.6 Rule making.
100.7 OMB control numbers assigned to information collections.

AUTHORITY: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103.

SOURCE: 32 FR 9616, July 4, 1967, unless otherwise noted.

§ 100.1 Introduction.

The following sections describe the organization of the Immigration and Naturalization Service, including statements of delegations of final authority, indicate the established places at which, and methods whereby, the public may secure information, direct attention to the regulations relating to the general course and method by which its functions are channeled and determined, and to display OMB control numbers assigned to the information collection requirements of the Service. Part 103 of this chapter sets forth the procedures governing the availability of Service opinions, orders, and records.

[48 FR 37201, Aug. 17, 1983]

§ 100.2 Organization and functions.

(a) *Office of the Commissioner.* The Attorney General has delegated to the Commissioner, the principal officer of the Immigration and Naturalization Service, authority to administer and enforce the Immigration and Nationality Act and all other laws relating to immigration, naturalization, and nationality as prescribed and limited by 28 CFR 0.105 *et seq.*

(1) *Office of the General Counsel.* The Office of the General Counsel, headed by the General Counsel, provides legal advice to the Commissioner and staff, prepares legislative reports, assists in litigation and prepares briefs and other legal memoranda when necessary, directs the activities of regional counsels, oversees the professional activities of all Service attorneys assigned to field offices, and makes recommendations on all personnel matters involving Service attorneys.

(2) *Office of Congressional and Public Affairs.* Headed by the Director for Congressional and Public Affairs, a staff member to the Commissioner, responds to congressional inquiries, advises the Commissioner and staff concerning legislative matters, directs and coordinates public notices, announcements, press releases, and other public information.

(3) *Office of Professional Responsibility.* Headed by the Director for Professional Responsibility who is subject to the general supervision and direction of the Commissioner, and who supervises, directs, and coordinates the Professional Responsibility Program.

(4) *Office of Field Inspections and Audit.* Headed by the Director for Field Inspections and Audit who is subject to the general supervision and direction of the Commissioner and who supervises, directs, and coordinates the Field Inspections and Audit Program.

(b) *Office of the Deputy Commissioner.* Headed by the Deputy Commissioner who is authorized to exercise all power and authority of the Commissioner unless any such power or authority is required to be exercised by the Commissioner personally or has been specifically delegated to another Service official or class of Service officer.

(1) *Office of Enforcement.* Headed by the Associate Commissioner for Enforcement who is responsible for planning, developing, directing, coordinating, and reporting on Service enforcement programs and activities, and participating in formulating Service enforcement policies. The Associate Commissioner for Enforcement directly supervises:

(i) Border Patrol Division,

(ii) Investigations Division,

(iii) Detention and Deportation Division,

(iv) Office of Anti-Smuggling, and

(v) Intelligence Unit.

(2) *Office of Management.* Headed by the Associate Commissioner for Management who is responsible for planning, developing, directing, coordinating, and reporting on Service management programs and activities and participating in formulating Service management policies. The Associate Commissioner for management directly supervises:

(i) Office of the Comptroller,

(ii) Personnel and Training Division,

(iii) Administration Division,

(iv) Office of Equal Employment Opportunity, and

(v) Office of Evaluation.

(c) *Office of the Executive Associate Commissioner.* Headed by the Executive Associate Commissioner who assists the Commissioner and Deputy Commissioner in all aspects of the administration of the Immigration and Naturalization Service by development and overall coordination of Servicewide policies and programs. The Executive Associate Commissioner provides general direction to and supervision of the Office of Plans and Analysis, Office of Information Systems, Office of Examinations, and all overseas offices.

(1) *Office of Plans and Analysis.* Headed by the Director for Plans and Analysis who is responsible for developing overall Service policies, strategic plans and programs, reviewing and analyzing the budget, and administering the Service's statistics and research programs.

(2) *Office of Information Systems.* Headed by the Associate Commissioner for Information Systems who is responsible for planning, developing, directing, coordinating, and reporting on Service information management programs and activities including automated data processing and telecommunications. The Associate Commissioner for Information Systems directly supervises:

(i) Records Systems Division,

(ii) Data Systems Division,

(iii) Office of Policy Directives and Instructions, and

(iv) Project Control and Integration Division

(3) *Office of Examinations.* Headed by the Associate Commissioner for Examinations who is responsible for planning, developing, directing, coordinating, and reporting on Service Examinations program activities, and participating in formulating Service Examinations policies. The Associate Commissioner for Examinations directly supervises:

(i) Adjudications Division,

(ii) Inspections Division,

(iii) Refugees, Asylum and Parole Division,

(iv) Office of Outreach Program, and

(v) Administrative Appeals Unit.

(d) *Offices of the Regional Commissioners.* Headed by regional commissioners who are assisted by associate regional commissioners for operations and associate regional commissioners for management, the regional commissioners are responsible for the administration and enforcement of all laws relating to immigration, nationality, and naturalization within their assigned geographic areas of activity. Regional commissioners are subject to the general supervision of the Commissioner and the direction of the Deputy Commissioner. Regional commissioners provide general guidance and supervision to:

(1) Service districts within their regions, and

(2) Border Patrol sectors within their regions.

(e) *Service districts.* Headed by district directors who may be assisted by deputy district directors, the district directors are responsible for the administration and enforcement of the Act and all other laws relating to immigration and naturalization within their assigned geographic areas of activity unless any such power and authority is required to be exercised by higher authority or has been exclusively delegated to another immigration official or class of immigration officer. District directors are subject to the general supervision and direction of their respective regional commissioners except that district directors outside of the United States are subject to the general supervision and direction of the Executive Associate Commissioner.

(f) *Border Patrol sectors.* Headed by chief patrol agents who may be assisted by deputy chief patrol agents, the chief patrol agents are responsible for the enforcement of the Act and all other laws relating to immigration and naturalization within their assigned geographic areas of activity unless any such power and authority is required to be exercised by higher authority or has been exclusively delegated to another immigration official or class of immigration officer. Chief patrol agents are subject to the general supervision and direction of their respective regional commissioners.

[48 FR 13147, Mar. 30, 1983; 48 FR 17060, Apr. 21, 1983, as amended at 49 FR 12189, Mar. 29, 1984; 49 FR 13135, Apr. 3, 1984; 49 FR 22768, June 1, 1984; 49 FR 37371, Sept. 24 1984]

§ 100.3 Places where, and methods whereby, information may be secured or submittals or requests made.

Any person desiring information relative to a matter handled by the Immigration and Naturalization Service, or any person desiring to make a submittal or request in connection with such a matter should communicate either orally or in writing with a district headquarters office or suboffice of the Service. If the office receiving the communication does not have jurisdiction to handle the matter, the communication, if written, will be forwarded to the proper office of the Service or, if oral, the person will be advised how to proceed. When the submittal or request consists of a formal application for one of the documents, privileges, or other benefits provided for in the laws administered by the Service or the regulations implementing those laws, the instructions on the form as to preparation and place of submission should be followed. In such cases, the provisions of this chapter dealing with the particular type of application may be consulted for regulatory provisions.

§ 100.4 Field Service.

The territory within which officials of the Immigration and Naturalization Service are located is divided into regions, districts, suboffices, and Border Patrol sectors as follows:

(a) The Eastern Regional Office, located in Burlington, Vermont, has jurisdiction over districts 2, 3, 4, 5, 7, 21, 22, 25 and 27; Border Patrol Sectors 1, 2, 3, 4; and the Regional Adjudications Center in St. Albans, Vermont. The Southern Regional Office, located in Dallas, Texas, has jurisdiction over districts 6, 14, 15, 20, 26, 28, 38 and 40; Border Patrol Sectors 15, 16, 17, 18, 19, 20, 21 and the Regional Adjudications Center in Dallas, Texas. The Northern Regional Office, located in Fort Snelling, Twin Cities, Minnesota, has jurisdiction over districts 8, 9, 10, 11, 12, 19, 24, 29, 30, 31 and 32; Border Patrol Sectors 5, 6, 7, 8, 9; and the Regional Adjudications Center in Lincoln, Nebraska. The Western Regional Office, located in San Pedro, California, has jurisdiction over districts 13, 16, 17, 18 and 39; Border Patrol Sectors 10, 11, 12, 13, 14; and the Regional Adjudications Center in San Ysidro, California.

(b) *District offices.* The following districts, which are designated by numbers, have fixed headquarters and are divided as follows:

1. [Reserved]

2. *Boston, Massachusetts.* The district office in Boston, Massachusetts has jurisdiction over the States of Connecticut, New Hampshire (except the port of entry at Pittsburg, New Hampshire), Massachusetts and Rhode Island.

3. *New York City, New York.* The district office in New York City, New York, has jurisdiction over the following counties in the State of New York: Bronx, Dutchess, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, and Westchester; also, over the United States immigration office located in Hamilton, Bermuda.

4. *Philadelphia, Pennsylvania.* The district office in Philadelphia, Pennsylvania, has jurisdiction over the States of Pennsylvania, Delaware, and West Virginia.

5. *Baltimore, Maryland.* The district office in Baltimore, Maryland, has jurisdiction over the State of Maryland.

6. *Miami, Florida.* The district office in Miami, Florida, has jurisdiction over the State of Florida, and the United States immigration offices located in Freeport and Nassau, Bahamas.

7. *Buffalo, New York.* The district office in Buffalo, New York, has jurisdiction over the State of New York except that part within the jurisdiction of District No. 3; also, over the United States immigration office at To-

ronto, Ontario, Canada; and office located at Montreal, Quebec, Canada.

8. *Detroit, Michigan*. The district office in Detroit, Michigan, has jurisdiction over the State of Michigan.

9. *Chicago, Illinois*. The district office in Chicago, Illinois, has jurisdiction over the States of Illinois, Indiana, and Wisconsin.

10. *St. Paul, Minnesota*. The district office in St. Paul, Minnesota, has jurisdiction over the States of Minnesota, North Dakota, and South Dakota; also, over the United States immigration office in the Province of Manitoba, Canada.

11. *Kansas City, Missouri*. The district office in Kansas City, Missouri, has jurisdiction over the States of Kansas and Missouri.

12. *Seattle, Washington*. The district office in Seattle, Washington, has jurisdiction over the State of Washington and over, the following counties in the State of Idaho: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone; also, over the United States immigration offices located in the Province of British Columbia, Canada.

13. *San Francisco, California*. The district office in San Francisco, California has jurisdiction over the following counties in the State of California: Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Lake, Lassen, Madera, Marin, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Benito, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solano, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba.

14. *San Antonio, Texas*. The district office in San Antonio, Texas has jurisdiction over the following counties in the State of Texas: Aransas, Atascosa, Bandera, Bastrop, Bee, Bexar, Blanco, Brazos, Brown, Burleson, Burnet, Caldwell, Calhoun, Coke, Coleman, Comal, Concho, Coryell, Crockett, De Witt, Dimmitt, Duval, Edwards, Falls, Fayette, Frio, Gillespie, Glasscock, Goliad, Gonzales, Guadalupe, Hays, Irion, Jackson, Jim Hogg, Jim Wells, Karnes, Kendall, Kerr, Kimble, Kinney, Lampasas, La Salle, Lavaca, Lee, Live Oak, Llano, McCulloch, McLennan, McMullen, Mason, Maverick, Medina, Menard, Milam, Mills, Nueces, Reagan, Real, Refugio, Robertson, Runnels, San Patricio, San Saba, Schleicher, Sterling, Sutton, Tom Green, Travis, Uvalde, Val Verde, Victoria, Webb, Williamson, Wilson, Zapata, Zavala.

15. *El Paso, Texas*. The district office in El Paso, Texas, has jurisdiction over the State of New Mexico, and the following counties in Texas: Brewster, Crane, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reeves, Terrell, Upton, Ward, and Winkler.

16. *Los Angeles, California*. The district office in Los Angeles, California, has jurisdiction over the following counties in the State of California: Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura.

17. *Honolulu, Hawaii*. The district office in Honolulu, Hawaii, has jurisdiction over the State of Hawaii and Guam, Mariana Islands.

18. *Phoenix, Arizona*. The district office in Phoenix, Arizona has jurisdiction over the States of Arizona and Nevada.

19. *Denver, Colorado*. The district office in Denver, Colorado, has jurisdiction over the States of Colorado, Utah, and Wyoming.

20. *Dallas, Texas*. The district office in Dallas, Texas, has jurisdiction over the State of Oklahoma, and the following counties in the State of Texas: Anderson, Andrews, Archer, Armstrong, Bailey, Baylor, Borden, Bosque, Bowie, Briscoe, Callahan, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Collingsworth, Comanche, Cooke, Cottle, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, Dickens, Donley, Eastland, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Franklin, Freestone, Gaines, Garza, Gray, Grayson, Gregg, Hale, Hall, Hamilton, Hansford, Hardeman, Harison, Hartley, Haskell, Hemphill, Henderson, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Hutchinson, Jack, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Leon, Limestone, Lipscomb, Lubbock, Lynn, Marion, Martin, Mitchell, Montague, Moore, Morris, Motley, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Potter, Rains, Randall, Red River, Roberts, Rockwall, Rusk, Scurry, Shackelford, Sherman, Smith, Somervell, Stephens, Stonewall, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Upshur, Van Zandt, Wheeler, Wichita, Willbarger, Wise, Wood, Yoakum, and Young.

21. *Newark, New Jersey*. The district office in Newark, New Jersey, has jurisdiction over the State of New Jersey.

22. *Portland, Maine*. The district office in Portland, Maine has jursidiction over the States of Maine, Vermont, and the port of entry at Pittsburg, New Hampshire.

23. [Reserved]

24. *Cleveland, Ohio*. The district office in Cleveland, Ohio, has jurisdiction over the State of Ohio.

25. *Washington, D.C.* The district office in Washington, D.C., has jurisdiction over the District of Columbia and the State of Virginia.

26. *Atlanta, Georgia*. The district office in Atlanta, Georgia, has jurisdiction over the

States of Georgia, North Carolina, South Carolina, and Alabama.

27. *San Juan, Puerto Rico.* The district office in San Juan, Puerto Rico has jurisdiction over the Commonwealth of Puerto Rico, the Virgin Islands of the United States and Great Britain, and the Dominican Republic.

28. *New Orleans, Louisiana.* The district office in New Orleans, La., has jurisdiction over the states of Louisiana, Arkansas, Mississippi, Tennessee, and Kentucky.

29. *Omaha, Nebraska.* The district office in Omaha, Nebraska, has jurisdiction over the States of Iowa and Nebraska.

30. *Helena, Montana.* The district office in Helena, Montana, has jurisdiction over the State of Montana and all counties in Idaho, except Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone; also, over the United States immigration office located in Calgary, Alberta, Canada.

31. *Portland, Oregon.* The district office in Portland, Oregon, has jurisdiction over the State of Oregon.

32. *Anchorage, Alaska.* The district office in Anchorage, Alaska, has jurisdiction over the State of Alaska.

33. *Bangkok, Thailand.* The district office in Bangkok has jurisdiction over Hong Hong, B.C.C. and adjacent islands, Formosa, the Philippines, Australia, New Zealand; all of continental Asia lying to the east of the western border of Afghanistan and eastern borders of Pakistan and India; Japan, Korea, Okinawa, and all other countries in the Pacific area.

34. [Reserved]

35. *Mexico City, Mexico.* The district office in Mexico City has jurisdiction over Mexico, Central America, South America, and Caribbean Islands except for those specifically delegated to the districts of Miami, Florida and San Juan, Puerto Rico.

36. [Reserved]

37. *Rome, Italy.* The district office in Rome, Italy has jurisdiction over Europe; Africa; the countries of Asia lying to the west and north of the western and northern borders, respectively, of Afghanistan, People's Republic of China and Mongolian People's Republic; plus the countries of India and Pakistan.

38. *Houston, Texas.* The district office in Houston, Texas, has jurisdiction over the following counties in the State of Texas: Angelina, Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Grimes, Hardin, Harris, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, Tyler, Walker, Waller, Washington, and Wharton.

39. *San Diego, California.* The district office in San Diego, California, has jurisdiction over the following counties in the State of California: Imperial and San Diego.

40. *Harlingen, Tex.* The district office in Harlingen, Tex. has jurisdiction over the following counties in the State of Texas: Brooks, Cameron, Hidalgo, Kenedy, Kleberg, Starr and Willacy.

(c) *Suboffices.* The following offices, in addition to the facilities maintained at Class A ports of entry listed in paragraph (c)(2) of this section, indicated by asterisk, are designated as suboffices:

(1) *Interior locations.*

Albany, N.Y.
Albuquerque, N. Mex.
Boise, Idaho
Charlotte, N.C.
Cincinnati, Ohio
Fairbanks, Alaska
Fresno, Calif.
Indianapolis, Indiana
Las Vegas, Nev.
Louisville, Ky.
Memphis, Tenn.
Oklahoma City, Okla.
Pittsburgh, Pa.
Reno, Nev.
Sacramento, Calif.
Salt Lake City, Utah.
St. Louis, Mo.
Spokane, Wash.
Tucson, Ariz.

(2) *Ports of entry for aliens arriving by vessel or by land transportation.* Subject to the limitations prescribed in this subparagraph, the following places are hereby designated as ports of entry for aliens arriving by any means of travel other than aircraft. The designation of such a port of entry may be withdrawn whenever, in the judgment of the Commissioner, such action is warranted. The ports are listed according to location by districts and are designated either Class A, Class B, or Class C. Class A means that the port is a designated port of entry for all aliens. Class B means that the port is a designated port of entry for aliens who at the time of applying for admission are lawfully in possession of valid alien registration receipt cards or valid nonresident aliens' border-crossing identification cards or are admissible without documents under the documentary waivers contained in Part 212 of this chapter. Class C means that the port is a designated port of entry only for aliens

who are arriving in the United States as crewmen as that term is defined in section 101(a)(10) of the Act with respect to vessels.

DISTRICT NO. 1—[RESERVED]

DISTRICT NO. 2—BOSTON, MASSACHUSETTS

Class A

Boston, Mass. (the port of Boston includes, among others, the port facilities at Beverly, Braintree, Chelsea, Everett, Hingham, Lynn, Manchester, Marblehead, Milton, Quincy, Revere, Salem, Saugus, and Weymouth Mass.)
Gloucester, Mass.
Hartford, Connecticut. (the port of Hartford includes, among others, the port facilities at Bridgeport, Groton, New Haven, and New London, Connecticut.)
Providence, R.I., (the port of Providence includes, among others, the port facilities at Davisville, Melville, Newport, Portsmouth, Quonset Point, Saunderstown, Tiverton, and Warick, R.I.; and at Fall River, New Bedford, and Somerset, Mass.)

Class C

Newburyport, Mass.
Plymouth, Mass.
Provincetown, Mass.
Sandwich, Mass.
Woods Hole, Mass.
Portsmouth, N.H.

DISTRICT NO. 3—NEW YORK, N.Y.

CLASS A

New York, N.Y. (the port of New York includes, among others, the port facilities at Poughkeepsie and Yonkers, N.Y.)

DISTRICT NO. 4—PHILADELPHIA, PA.

CLASS A

Erie, Pa.
Philadelphia, Pa. (the port of Philadelphia includes, among others, the port facilities at Delaware City, Lewes, New Castle, and Wilmington, Del.; at Artificial Island, Billingsport, Camden, Deepwater Point, Fisher's Point, Gibbstown, Gloucester City, Paulsboro, and Trenton, N.J.; and at Chester, Essington, Fort Mifflin, Marcus Hook, and Morrisville, Pa.)

DISTRICT NO. 5—BALTIMORE, MD.

CLASS A

Baltimore, Md.

CLASS C

Piney Point, Md.
Salisbury, Md.

DISTRICT NO. 6—MIAMI, FLA.

CLASS A

Boca Grande, Fla.
Fernandiana, Fla.
Fort Pierce, Fla.
*Jacksonville, Fla.
*Key West, Fla.
Miami, Fla.
Panama City, Fla.
Pensacola, Fla.
Port Canaveral, Fla.
*Port Everglades, Fla.
(Ft. Lauderdale)
St. Augustine, Fla.
St. Petersburg, Fla.
*Tampa, Fla.
*West Palm Beach, Fla.

CLASS C

Port St. Joe, Fla.

DISTRICT NO. 7—BUFFALO, N.Y.

CLASS A

Albany, N.Y.
Alexandria Bay, N.Y.
Buffalo, N.Y.
Cape Vincent, N.Y.
*Champlain, N.Y.
*Chateaugay, N.Y.
Clayton, N.Y.
*Fort Covington, N.Y.
Lewiston, N.Y.
*Massena, N.Y.
*Mooers, N.Y.
*Niagara Falls, N.Y.
*Ogdensburg, N.Y.
Oswego, N.Y.
Rochester, N.Y.
Rouses Point, N.Y.
*Thousand Islands Bridge, N.Y.
*Trout River, N.Y.
Youngstown, N.Y.

CLASS B

Cannons Corners, N.Y.
Churubusco, N.Y.
Hogansburg, N.Y.
Jamison's Line, N.Y.

CLASS C

Sodus Point, N.Y.

DISTRICT NO. 8—DETROIT, MICH.

CLASS A

*Algonac, Mich.
Detroit, Mich.
Isle Royale, Mich.
*Marine City, Mich.
Marysville, Mich.
*Port Huron, Mich.
*Roberts Landing, Mich.
*Sault Ste. Marie, Mich.

Class B

Alpena, Mich.
Detour, Mich.
Mackinac Island, Mich.
Rogers City, Mich.

Class C

Alpena, Mich.
Baraga, Mich.
Bay City, Mich.
Cheboygan, Mich.
Detour, Mich.
Escanaba, Mich.
Grand Haven, Mich.
Holland, Mich.
Houghton, Mich.
Ludington, Mich.
Mackinac Island, Mich.
Manistee, Mich.
Marquette, Mich.
Menominee, Mich.
Monroe, Mich.
Munising, Mich.
Muskegon, Mich.
Port Dolomite, Mich.
Port Inland, Mich.
Rogers City (Calcite), Mich.
Saginaw, Mich.
South Haven, Mich.

District No. 9—Chicago, Ill.

Class A

Chicago, Ill.
*Green Bay, Wis.
*Hammond, Ind.
*Milwaukee, Wis.

Class C

East Chicago, Ill.
Gary, Ind.
Michigan City, Ind.
Ashland, Wis.
Kenosha, Wis.
Manitowoc, Wis.
Marinette, Wis.
Racine, Wis.
Sheboygan, Wis.
Sturgeon Bay, Wis.

District No. 10—St. Paul, Minn.

Class A

*Baudette, Minn.
*Duluth, Minn. (the port of Duluth includes, among others, the port facilities of Superior, Wis.)
*Ely, Minn.
*Grand Portage, Minn.
*International Falls, Minn.
*Lancaster, Minn.
*Noyes, Minn.
*Pine Creek, Minn.
Ranier, Minn.
*Roseau, Minn.
*Warroad, Minn.
*Ambrose, N. Dak.
*Antler, N. Dak.
*Carbury, N. Dak.
*Dunseith, N. Dak.
*Fortuna, N. Dak.
*Hannah, N. Dak.
*Hansboro, N. Dak.
*Maida, N. Dak.
*Neche, N. Dak.
*Noonan, N. Dak.
*Northgate, N. Dak.
Pembina, N. Dak.
*Portal, N. Dak.
*St. John, N. Dak.
*Sarles, N. Dak.
*Sherwood, N. Dak.
*Walhalla, N. Dak.
*Westhope, N. Dak.

Class B

Crane Lake, Minn.
Oak Island, Minn.

Class C

Grand Marais, Minn.
Silver Bay, Minn.
Taconite Harbor, Minn.
Two Harbors, Minn.

District No. 12—Seattle, Wash.

Class A

*Aberdeen, Wash. (the port of Aberdeen includes, among others, the port facilities at South Bend and Raymond, Wash.)
*Anacortes, Wash.
*Bellingham, Wash.
*Blaine, Wash.
*Boundary, Wash.
*Danville, Wash.
Ferry, Wash.
Friday Harbor, Wash. (the port of Friday Harbor includes, among others, the port facilities at Roche Harbor, Wash.)
*Frontier, Wash.
*Laurier, Wash.
*Lynden, Wash.
*Metaline Falls, Wash.
Neah Bay, Wash.
Olympia, Wash.
*Oroville, Wash.
*Point Roberts, Wash.
*Port Angeles, Wash.
Port Townsend, Wash.
Seattle, Wash. (the port of Seattle includes, among others, the port facilities at Bangor, Blake Island, Bremerton, Eagle Harbor, Edmonds, Everett, Holmes Harbor, Houghton, Kennydale, Keyport, Kingston, Manchester, Mukilteo, Orchard Point, Point Wells, Port Gamble, Port

Ludlow, Port Orchard, Poulsbo, Shuffleton, and Winslow, Wash.)
*Sumas, Wash.
*Tacoma, Wash. (the port of Tacoma includes, among others, the port facilities at Dupont, Wash.)

CLASS B

Nighthawk, Wash.

DISTRICT NO. 13—SAN FRANCISCO, CALIF.

CLASS A

San Francisco, Calif.

CLASS C

Eureka, Calif.

DISTRICT NO. 14—SAN ANTONIO, TEX.

CLASS A

Amistad Dam, Tex.
*Corpus Christi, Tex. (the port of Corpus Christi includes, among others, the port facilities at Harbor Island, Ingleside, and Port Lavaca-Point Comfort, Tex.)
*Del Rio, Tex.
*Eagle Pass, Tex.
*Laredo, Tex.

DISTRICT NO. 15—EL PASO, TEXAS

Class A

*Columbus, N. Mex.
El Paso, Tex.
*Fabens, Tex.
*Fort Hancock, Tex.
*Presidio, Tex.

Class B

Antelope Wells, N. Mex.
Monument No. 67, near Cloverdale, N. Mex.
Boquillas, Tex.
Candelaria, Tex.
Castolon, Tex.
Chinati, Tex.
Heath Crossing, Tex.
Lajitas, Tex.
Polvo, Tex.
Porvenir, Tex.
Ruidosa, Tex.
San Vicente, Tex.
Stillwell Crossing, Tex.

DISTRICT NO.16—LOS ANGELES, CALIF.

CLASS A

Los Angeles, Calif. (the port of Los Angeles includes, among others, the port facilities at San Pedro, Long Beach, Port Hueneme, and Ventura, Calif.)
*San Luis Obispo, Calif. (the port of San Luis Obispo includes, among others, the port facilities at Avila, Estero Bay, El Capitan, Elwood, Gaviota, Morro Bay, and Santa Barbara, Calif.)

DISTRICT NO. 17—HONOLULU, HAWAII

CLASS A

*Agana, Guam, M.I. (including the port facilities at Apra Harbor, Guam)
Honolulu, Hawaii

CLASS C

Hilo, Hawaii
Kahului, Hawaii
Nawiliwili, Hawaii
Port Allen, Hawaii

DISTRICT NO. 18—PHOENIX, ARIZ.

CLASS A

*Douglas, Ariz.
*Lukeville, Ariz.
*Naco, Ariz.
*Nogales, Ariz.
*Sasabe, Ariz.
*San Luis, Ariz.

CLASS B

Lochiel, Ariz.

DISTRICT NO. 21—NEWARK, N.J.

CLASS A

Newark, N.J. (the port of Newark includes, among others, the port facilities at Bayonne, Carteret, Edgewater, Elizabeth, Hoboken, Jersey City, Linden, Perth Amboy, Port Newark, Sewaren, and Weehawken, N.J.)

DISTRICT NO. 22—PORTLAND, MAINE

CLASS A

*Alburg, Vt.
*Alburg Springs, Vt.
*Bangor, Maine (the port of Bangor includes, among others, the port facilities at Bar Harbor, Belfast, Brewer, Bucksport, Jones-port, Northeast Harbor, Prospect Harbor, Sandy-point, Seal Harbor, Searsport, and South West Harbor, Maine)
* Beebe Plain, Vt.
*Beecher Falls, Vt.
*Bridgewater Maine
*Calais, Maine (includes Ferry Point, and Milltown Bridges)
*Canaan, Vt.
*Coburn Gore, Maine
*Derby Line, Vt.
*Eastport, Maine
*East Richford, Vt.
*Fort Fairfield, Maine
*Fort Kent, Maine

*Hamlin, Maine
*Highgate Springs, Vt.
*Houlton, Maine
*Jackman, Maine
*Limestone, Maine
Lubec, Maine
*Madawaska, Maine
Morses Line, Vt.
*Newport, Vt.
*North Troy, Vt.
*Norton, Vt.
Pittsburg, N.H.
Portland, Maine
*Richford, Vt. (includes the Pinnacle port of entry)
*St. Albans, Vt.
*St. Aurelie, Maine
*Van Buren, Maine
*Vanceboro, Maine
*West Berkshire, Vt.

Class B

Daaquam, Maine
Easton, Maine
Estcourt, Maine
Forest City, Maine
Knoxford Line Road (Mars Hill), Maine
Monticello, Maine.
Orient, Maine
Robbinston, Maine
St. Juste, Maine
St. Pamphile, Maine

Class C

Bath, Maine
Boothbay Harbor, Maine
Kittery, Maine
Rockland, Maine
Wiscasset, Maine

District No. 23—[Reserved]

District No. 24—Cleveland, Ohio

Class A

Cleveland, Ohio
*Sandusky, Ohio
*Toledo, Ohio

Class C

Ashtabula, Ohio
Conneaut, Ohio
Fairport, Ohio
Huron, Ohio
Lorain, Ohio
Marblehead, Ohio

District No. 25—Washington, D.C.

Class A

*Norfolk, Va. (includes the port facilities at Newport News and Fort Monroe, Va.)
Washington, D.C. (includes the port facilities at Alexandria, Va.)

District No. 26—Atlanta, Ga.

Class A

*Mobile, Ala.
Brunswick, Ga.
*Savannah, Ga.
Morehead City, N.C.
*Wilmington, N.C.
*Charleston, S.C.
Georgetown, S.C.

District No. 27—San Juan, P.R.

Class A

Aguadilla, P.R.
Ensenada, P.R.
Fajardo, P.R.
Humacao, P.R.
Jobos, P.R.
Mayaguez, P.R.
*Ponce, P.R.
San Juan, P.R.
*Christiansted, St. Croix, V.I.
Frederiksted, St. Croix, V.I.
*Cruz Bay, St. John, V.I.
*Charlotte Amalie, St. Thomas, V.I.

District No. 28—New Orleans, La.

Class A

Baton Rouge, La.
Lake Charles, La.
New Orleans, La. (the port of New Orleans includes, among others, the port facilities at Avondale, Bell Chasse, Braithwaite, Burnside, Chalmette, Destrahan, Geismar, Gramercy, Gretna, Harvey, Marrero, Norco, Port Sulphur, St. Rose, and Westwego, La.)
Gulfport, Miss.

Class C

Morgan City, La.
Pascagoula, Miss.

District No. 30—Helena, Mont.

Class A

*Eastport, Idaho
*Porthill, Idaho
Chief Mountain, Mont. (May-October)
Del Bonita, Mont.
*Morgan, Mont.
*Opheim, Mont.
*Piegan, Mont.
*Raymond, Mont.
*Roosville, Mont.
*Scobey, Mont.
Scobey, Mont.
*Sweetgrass, Mont.
*Turner, Mont.
*Whitetail, Mont.
*Wildhorse, Mont.
*Willow Creek, Mont.

Class B

Whitlash, Mont.

District No. 31—Portland, Oreg.

Class A

Astoria, Oreg. (the port of Astoria includes, among others, the port facilities at Bradwood, Pacific City, Taft, Tilliamook (including Garibaldi and Bay City), Warrenton, Wauna, and Westport, Oreg.)
Coos Bay, Oreg. (the port of Coos Bay includes, among others, the port facilities at Bandon, Brookings, Depoe Bay, Florence, Frankfort, Gold Beach, Newport (including Toledo), Port Orford, Reedsport, Waldport, and Yachats, Oreg.)
Portland, Oreg. (the port of Portland includes, among others, the port facilities at Beaver, Columbia City, Prescott, Rainier, and St. Helens, Oreg.; and Kalama, Longview, and Vancouver, Wash.)

District No. 32—Anchorage, Alaska

Class A

Anchorage, Alaska
*Dalton's Cache, Alaska
Juneau, Alaska
*Ketchikan, Alaska
Skagway, Alaska
*Tok, Alaska

Class B

Eagle, Alaska
Hyder, Alaska

District No. 38—Houston, Tex.

Class A

Beaumont, Tex.
*Galveston, Tex. (the port of Galveston includes, among others, the port facilities at Freeport, Port Bolivar, and Texas City, Tex.)
Houston, Tex. (the port of Houston includes, among others, the port facilities at Baytown, Tex.)
*Port Arthur, Tex. (the port of Port Arthur includes, among others, the port facilities at Orange and Sabine, Tex.)

District No. 39—San Diego, Calif.

Class A

*Andrade, Calif.
*Calexico, Calif.
*Otay Mesa, Calif.
*San Ysidro Port of Entry, Calif.
*Tecate, Calif.

District No. 40—Harlingen, Tex.

Class A

*Brownsville, Tex.
*Falcon Heights, Tex.
*Hidalgo, Tex.
*Los Ebanos, Tex.
*Port Isabel, Tex.
*Progreso, Tex.
*Rio Grande City, Tex.
*Roma, Tex.

(3) *Ports of entry for aliens arriving by aircraft.* In addition to the following international airports which are hereby designated as ports of entry for aliens arriving by aircraft, other places where permission for certain aircraft to land officially has been given and places where emergency or forced landings are made under Part 239 of this chapter shall be regarded as designated for the entry of aliens arriving by such aircraft:

District No. 1—[Reserved]

District No. 2—Boston, Mass.

Manchester, N.H., Grenier Airport.

District No. 4—Philadelphia, Pa.

Charlestown, West Virginia, Kanahwa, Airport.

District No. 6—Miami, Fla.

Fort Lauderdale, Fla., Fort Lauderdale-Hollywood Airport.
Key West, Fla., Key West International Airport
Miami, Fla., Chalks Flying Service Seaplane Base
Miami, Fla., Miami International Airport
Tampa, Fla., Tampa International Airport
West Palm Beach, Fla., Palm Beach International Airport.

District No. 7—Buffalo, N.Y.

Albany, N.Y., Albany County Airport
Massena, N.Y., Richards Field
Ogdensburg, N.Y., Ogdensburg Harbor
Ogdensburg, N.Y., Ogdensburg Municipal Airport
Rochester, N.Y., Rochester-Monroe County Airport
Rouses Point, N.Y., Rouses Point Seaplane Base
Watertown, N.Y., Watertown Municipal Airport

District No. 8—Detroit, Mich.

Detroit, Mich., Detroit-City Airport
Detroit, Mich., Detroit Metropolitan Wayne County Airport
Port Huron, Mich., St. Clair County Airport
Sault Ste. Marie, Mich., Sault Ste. Marie Airport

District No. 9—Chicago, Ill.

Chicago, Ill., Chicago Midway Airport

District No. 10—St. Paul, Minn.

Baudette, Minn., Baudette International Airport
Duluth, Minn., Duluth International Airport
Duluth, Minn., Sky Harbor Airport
International Falls, Minn., Falls International Airport
Ranier, Minn., International Seaplane Base
Grand Forks, N. Dak., Grand Forks International Airport
Minot, N. Dak., Minot International Airport
Pembina, N. Dak., Port Pembina Airport
Portal, N. Dak., Portal Airport
Williston, N. Dak., Sioulin Field (Municipal)

District No. 12—Seattle, Wash.

Bellingham, Wash., Bellingham Airport
Friday Harbor, Wash., Friday Harbor
Oroville, Wash., Dorothy Scott Municipal Airport
Oroville, Wash., Dorothy Scott Seaplane Base
Port Townsend, Wash., Jefferson County International Airport
Seattle, Wash., Boeing Municipal Air Field
Seattle, Wash., Lake Union
Spokane, Wash., Felts Field

District No. 14—San Antonio, Tex.

Del Rio, Tex., Del Rio International Airport
Eagle Pass, Tex., Eagle Pass Airport
Laredo, Tex., Laredo International Airport

District No. 15—El Paso, Tex.

El Paso, Tex., International Airport

District No. 17—Honolulu, Hawaii

Agana, Guam, Mariana Islands, Agana Field

District No. 18—Phoenix, Ariz.

Douglas, Ariz., Bisbee-Douglas Airport
Nogales, Ariz., Nogales International Airport
Tucson, Ariz., Tucson International Airport
Yuma, Ariz., Yuma International Airport

District No. 22—Portland, Maine

Burlington, Vt., Burlington Municipal Airport
Caribou, Maine, Caribou Municipal Airport
Highgate Springs, Vt., Franklin County Regional Airport
Newport, Vt., Newport State Airport

District No. 24—Cleveland, Ohio

Akron, Ohio, Municipal Airport
Cleveland, Ohio, Cleveland Hopkins Airport
Sandusky, Ohio, John G. Hinde Airport

District No. 30—Helena, Mont.

Cut Bank, Mont., Cut Bank Airport
Glasgow, Mont., Glasgow International Airport
Great Falls, Mont., Great Falls International Airport
Havre, Mont., Havre-Hill County Airport

District No. 32—Anchorage, Alaska

Juneau, Alaska, Juneau Municipal Airport

Juneau, Alaska, Juneau Airport (Seaplane Base Only)

Ketchikan, Alaska, Ketchikan Airport
Wrangell, Alaska, Wrangell Seaplane Base

District No. 39—San Diego, Calif.

Calexico, Calif., Calexico International Airport, San Diego, Calif., San Diego Municipal Airport (Lindbergh Field)

District No. 40—Harlingen, Tex.

Brownsville, Tex., Rio Grande Valley International Airport at Brownsville, Tex.
McAllen, Tex., Miller International Airport

(4) *Immigration offices in foreign countries:*

Athens, Greece
Bangkok, Thailand
Calgary, Alberta, Canada
Frankfurt, Germany
Freeport, Bahamas
Guadalajara, Mexico
Hamilton, Bermuda
Hong Kong, B.C.C.
Manila, Philippine Islands
Mexico City, Mexico
Monterrey, Mexico
Montreal, Quebec, Canada
Naples, Italy
Nassau, Bahamas
Ottawa, Ontario, Canada
Panama City, Republic of Panama
Rome, Italy
Seoul, Korea
Singapore, Republic of Singapore
Toronto, Ontario, Canada
Vancouver, British Columbia, Canada
Victoria, British Columbia, Canada
Vienna, Austria
Winnipeg, Manitoba, Canada

(d) *Border Patrol Sectors.* Border Patrol sector headquarters and stations are situated at the following locations:

Sector No. 1—Houlton, Maine

Calais, Maine
Fort Fairfield, Maine
Houlton, Maine
Jackman, Maine (Rangeley, Maine)
Van Buren, Maine

BEST ILABLE

Sector No. 2—Swanton, VT

Beecher Falls, Vt.
Derby Line, Vt.
Swanton, Vt. (Richford, Vt.)
Ogdensburg, N.Y.
Malone, N.Y.
Massena, N.Y.
Rouses Point, N.Y.

Sector No. 3—[Reserved]

Sector No. 4—Buffalo, NY

Buffalo, N.Y.
Fulton, N.Y.
Niagara Falls, N.Y.
Watertown, N.Y.

Sector No. 5—Detroit, Mich.

Detroit, Mich.
Port Huron, Mich.
Sault Ste. Marie, Mich.
Trenton, Mich.

Sector No. 6—Grand Forks, N. Dak.

Bottineau, N. Dak.
Grand Forks, N. Dak.
Duluth, Minn. (Grand Marais, Minn.)
International Falls, Minn.
Pembina, N. Dak.
Portal, N. Dak.
Warroad, Minn.

Sector No. 7—Havre, Mont.

Havre, Mont. (Malta, Mont.).
Shelby, Mont. (Sweetgrass, Mont.).
Twin Falls, Idaho.
Wolf Point, Mont. (Plentywood, Mont.).

Sector No. 8—Spokane, Wash.

Bonners Ferry, Idaho.
Colville, Wash.
Oroville, Wash.
Spokane, Wash.
Whitefish, Mont. (Roosville, Mont.).

Sector No. 9—Blaine, Wash.

Bellingham, Wash.
Blaine, Wash.
Lynden, Wash.

Sector No. 10—Livermore, Calif.

Bakersfield, Calif.
Fresno, Calif.
Livermore, Calif.
Oxnard, Calif.
Sacramento, Calif.
Salinas, Calif.
San Luis Obispo, Calif.
Stockton, Calif.

Sector No. 11—San Diego, Calif.

Campo, Calif. (Jacumba, Calif.)
Chula Vista, Calif. (Julian, Calif.)
El Cajon, Calif.
Imperial Beach, Calif.
San Clemente, Calif.
Temecula, Calif.

Sector No. 12—El Centro, Calif.

Calexico, Calif.
El Centro, Calif.
Indio, Calif.
Riverside, Calif.

Sector No. 13—Yuma, Ariz.

Blythe, Calif.
Tacna, Ariz.
Yuma, Ariz.

Sector No. 14—Tucson, Ariz.

Ajo, Ariz.
Casa Grande, Ariz.
Douglas, Ariz.
Gila Bend, Ariz.
Naco, Ariz.
Nogales, Ariz.
Phoenix, Ariz.
Tucson, Ariz.
Willcox, Ariz.

Sector No. 15—El Paso, Tex.

Alamogordo, N. Mex.
Carlsbad, N. Mex.
Deming, N. Mex.
El Paso, Tex.
Fabens, Tex.
Fort Hancock, Tex.
Las Cruces, N. Mex.
Lordsburg, N. Mex.
Sierra Blanca, Tex.
Truth or Consequences, N. Mex.
Ysleta, Tex.

Sector No. 16—Marfa, Tex.

Alpine, Tex.
Amarillo, Tex.
Big Spring, Tex.
Fort Stockton, Tex.
Lubbock, Tex.
Marfa, Tex.
Pecos, Tex. (Midland/Odessa, Tex.)
Presidio, Tex.
Sanderson, Tex.
Van Horn, Tex.

Sector No. 17—Del Rio, Tex.

Brackettville, Tex.
Carrizo Springs, Tex.
Comstock, Tex.
Del Rio, Tex.
Eagle Pass, Tex.
Ozona, Tex.
Sonora, Tex.
Uvalde, Tex.

Sector No. 18—Laredo, Tex.

Cotulla, Tex.
Freer, Tex.
Hebbronville, Tex.

Laredo, Tex.

SECTOR No. 19—MCALLEN, TEX.

Brownsville, Tex.
Falfurrias, Tex.
Harlingen, Tex.
Kingsville, Tex.
McAllen, Tex.
Mercedes, Tex.
Rio Grande City, Tex.

SECTOR No. 20—NEW ORLEANS, LA.

Baton Rouge, La.
Gulfport, Miss.
Lake Charles, La.
Little Rock, Ark.
Miami, Okla.
Mobile, Ala. (Pensacola, Fla.)
New Orleans, La.

SECTOR No. 21—MIAMI, FLA.

Jacksonville, Fla.
Miami, Fla.
Orlando, Fla.
Tampa, Fla.
West Palm Beach, Fla.

(e) Regional adjudications centers are situated at the following locations:

St. Albans, Vermont
Dallas, Texas
Lincoln, Nebraska
San Ysidro, California

(Secs. 100 and 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1101 and 1103))

[38 FR 34183, Dec. 12, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 100.4, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 100.5 Regulations.

The regulations of the Immigration and Naturalization Service, published as Chapter I of Title 8 of the Code of Federal Regulations, contain information which under the provisions of section 552 of Title 5 of the United States Code, is required to be published and is subdivided into Subchapter A (General Provisions, Parts 1 through 3, inclusive), Subchapter B (Immigration Regulations, Parts 100 through 299, inclusive), and Subchapter C (Nationality Regulations, Parts 306 through 499, inclusive). Any person desiring information with respect to a particular procedure (other than rule making) under the Immigration and Nationality Act should examine the part or section in Chapter I of Title 8 of the Code of Federal Regulations dealing with such procedures as well as the section of the Act implemented by such part or section.

§ 100.6 Rule making.

Section 103(a) of the Immigration and Nationality Act requires the Attorney General to establish such regulations as he deems necessary for carrying out his authority under the provisions of that Act. The Attorney General has delegated certain rule making authority to the Commissioner of Immigration and Naturalization. The provisions of the FEDERAL REGISTER Act (49 Stat. 500; 44 U.S.C. 301-314), as amended, and of the regulations thereunder (1 CFR—Administrative Committee of the Federal Register) as well as the provisions of section 553 of Title 5 of the United States Code governing the issuance of regulations are observed.

§ 100.7 OMB control numbers assigned to information collections.

This section collects and displays the control numbers assigned to information collection requirements of the Immigration and Naturalization Service by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511. The Service intends that this section comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of the Office of Management and Budget for each agency information collection requirement.

8 CFR part or section where identified and described	Current OMB control No.
103.2(b)(1)	1115-0062
103.6	1115-0085
103.6(c)	1115-0046
103.10(a)(2)	1115-0087
103.10(f)	1115-0088
204.1(a)	1115-0054
204.1(b)	1115-0049
204.1(c)	1115-0061
Part 207	1115-0057
207.2	1115-0066
207.2(d)	1115-0056
207.3(b)	1115-0098

8 CFR part or section where identified and described	Current OMB control No.
Part 208	1115-0086
211.1(b)(3)	1115-0042
211.2	1115-0042
212.1(f)	1115-0042
212.2	1115-0106
212.3	1115-0032
212.4(b)	1115-0028
212.4(g)	1115-0040
212.6	1115-0019
212.6	1115-0047
212.7	1115-0048
212.7(c)	1115-0059
212.8(b)	1115-0081
214.1	1115-0051
214.1(c)	1115-0093
214.2(e)	1115-0023
214.2(f)	1115-0060
214.2(f)	1115-0051
214.2(g)	1115-0090
214.2(h)	1115-0038
214.2(k)	1115-0071
214.2(l)	1115-0038
214.2(m)	1115-0060
214.2(m)	1115-0051
214.3	1115-0070
214.3(g)	1115-0051
Part 223	1115-0005
Part 223a	1115-0084
223.1	1115-0037
Part 231	1115-0083
Part 231	1115-0078
Part 231	1115-0108
Part 232	1115-0036
Part 233	1115-0036
234.2(c)	1115-0048
Part 235	1115-0077
235.1(e)	1115-0065
243.4	1115-0055
243.7	1115-0043
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248.4	1115-0038
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264.1(f)	1115-0002
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Part 322	1115-0010
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327.1	1115-0009
Part 328	1115-0009
328.3	1115-0022
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329.2	1115-0022
Part 330	1115-0009
Part 330	1115-0031
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335.11	1115-0009
336.16a	1115-0076
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338.16	1115-0030
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343a.1	1115-0015
343b	1115-0016

[48 FR 37201, Aug. 17, 1983]

PART 101—PRESUMPTION OF LAWFUL ADMISSION

Sec.
101.1 Presumption of lawful admission.
101.2 Presumption of lawful admission; entry under erroneous name or other errors.
101.3 Creation of record of lawful permanent resident status for person born under diplomatic status in the United States.
101.4 Registration procedure.

AUTHORITY: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103, unless otherwise noted.

§ 101.1 Presumption of lawful admission.

A member of the following classes shall be presumed to have been lawfully admitted for permanent residence even though a record of his admission cannot be found, except as otherwise provided in this section, unless he abandoned his lawful permanent resident status or subsequently lost that status by operation of law:

(a) *Prior to June 30, 1906.* An alien who establishes that he entered the United States prior to June 30, 1906.

(b) *United States land borders.* An alien who establishes that, while a citizen of Canada or Newfoundland, he entered the United States across the Canadian border prior to October 1, 1906; an alien who establishes that while a citizen of Mexico he entered the United States across the Mexican border prior to July 1, 1908; an alien who establishes that, while a citizen of Mexico, he entered the United States at the port of Presidio, Texas, prior to

October 21, 1918, and an alien for whom a record of his actual admission to the United States does not exist but who establishes that he gained admission to the United States prior to July 1, 1924, pursuant to preexamination at a United States immigration station in Canada and that a record of such preexamination exists.

(c) *Virgin Islands.* An alien who establishes that he entered the Virgin Islands of the United States prior to July 1, 1938, even though a record of his admission prior to that date exists as a non-immigrant under the Immigration Act of 1924.

(d) *Asiatic barred zone.* An alien who establishes that he is of a race indigenous to, and a native of a country within, the Asiatic zone defined in section 3 of the Act of February 5, 1917, as amended, that he was a member of a class of aliens exempted from exclusion by the provisions of that section, and that he entered the United States prior to July 1, 1924, provided that a record of his admission exists.

(e) *Chinese and Japanese aliens*—(1) *Prior to July 1, 1924.* A Chinese alien for whom there exists a record of his admission to the United States prior to July 1, 1924, under the laws and regulations formerly applicable to Chinese and who establishes that at the time of his admission he was a merchant, teacher, or student, and his son or daughter under 21 or wife accompanying or following to join him; a traveler for curiosity or pleasure and his accompanying son or daughter under 21 or accompanying wife; a wife of a United States citizen; a returning laborer; and a person erroneously admitted as a United States citizen under section 1993 of the Revised Statutes of the United States, as amended, his father not having resided in the United States prior to his birth.

(2) *On or after July 1, 1924.* A Chinese alien for whom there exists a record of his admission to the United States as a member of one of the following classes; an alien who establishes that he was readmitted between July 1, 1924, and December 16, 1943, inclusive, as a returning Chinese laborer who acquired lawful permanent residence prior to July 1, 1924; a person erroneously admitted between July 1, 1924, and June 6, 1927, inclusive, as a United States citizen under section 1993 of the Revised Statutes of the United States, as amended, his father not having resided in the United States prior to his birth; an alien admitted at any time after June 30, 1924, under section 4 (b) or (d) of the Immigration Act of 1924; an alien wife of a United States citizen admitted between June 13, 1930, and December 16, 1943, inclusive, under section 4(a) of the Immigration Act of 1924; an alien admitted on or after December 17, 1943, under section 4(f) of the Immigration Act of 1924; an alien admitted on or after December 17, 1943, under section 317(c) of the Nationality Act of 1940, as amended; an alien admitted on or after December 17, 1943, as a preference or nonpreference quota immigrant pursuant to section 2 of that act; and a Chinese or Japanese alien admitted to the United States between July 1, 1924, and December 23, 1952, both dates inclusive, as the wife or minor son or daughter of a treaty merchant admitted before July 1, 1924, if the husband-father was lawfully admitted to the United States as a treaty merchant before July 1, 1924, or, while maintaining another status under which he was admitted before that date, and his status changed to that of a treaty merchant or treaty trader after that date, and was maintaining the changed status at the time his wife or minor son or daughter entered the United States.

(f) *Citizens of the Philippine Islands*—(1) *Entry prior to May 1, 1934.* An alien who establishes that he entered the United States prior to May 1, 1934, and that he was on the date of his entry a citizen of the Philippine Islands, provided that for the purpose of petitioning for naturalization he shall not be regarded as having been lawfully admitted for permanent residence unless he was a citizen of the Commonwealth of the Philippines on July 2, 1946.

(2) *Entry between May 1, 1934, and July 3, 1946.* An alien who establishes that he entered Hawaii between May 1, 1934, and July 3, 1946, inclusive, under the provisions of the last sentence of section 8(a)(1) of the Act of March 24, 1934, as amended, that he

was a citizen of the Philippine Islands when he entered, and that a record of such entry exists.

(g) *Temporarily admitted aliens.* The following aliens who when admitted expressed an intention to remain in the United States temporarily or to pass in transit through the United States, for whom records of admission exist, but who remained in the United States: An alien admitted prior to June 3, 1921, except if admitted temporarily under the 9th proviso to section 3 of the Immigration Act of 1917, or as an accredited official of a foreign government, his suite, family, or guest, or as a seaman in pursuit of his calling; an alien admitted under the Act of May 19, 1921, as amended, who was admissible for permanent residence under that Act notwithstanding the quota limitation's thereof and his accompanying wife or unmarried son or daughter under 21 who was admissible for permanent residence under that Act notwithstanding the quota limitations thereof; and an alien admitted under the Act of May 19, 1921, as amended, who was charged under that Act to the proper quota at the time of his admission or subsequently and who remained so charged.

(h) *Citizens of the Trust Territory of the Pacific Islands who entered Guam prior to December 24, 1952.* An alien who establishes that while a citizen of the Trust Territory of the Pacific Islands he entered Guam prior to December 24, 1952, by records, such as Service records subsequent to June 15, 1952, records of the Guamanian Immigration Service, records of the Navy or Air Force, or records of contractors of those agencies, and was residing in Guam on December 24, 1952.

(i) *Aliens admitted to Guam.* An alien who establishes that he was admitted to Guam prior to December 24, 1952, by records such as Service records subsequent to June 15, 1952, records of the Guamanian Immigration Service, records of the Navy or Air Force, or records of contractors of those agencies; that he was not excludable under the Act of February 5, 1917, as amended; and that he continued to reside in Guam until December 24, 1952, and thereafter was not admitted or readmitted into Guam as a nonimmigrant, provided that the provisions of this paragraph shall not apply to an alien who was exempted from the contract laborer provisions of section 3 of the Immigration Act of February 5, 1917, as amended, through the exercise, expressly or impliedly, of the 4th or 9th provisos to section 3 of that act.

(j) *Erroneous admission as United States citizens or as children of citizens.* (1) (i) An alien for whom there exists a record of admission prior to September 11, 1957, as a United States citizen who establishes that at the time of such admission he was the child of a United States citizen parent; he was erroneously issued a United States passport or included in the United States passport of his citizen parent accompanying him or to whom he was destined; no fraud or misrepresentation was practiced by him in the issuance of the passport or in gaining admission; he was otherwise admissible at the time of entry except for failure to meet visa or passport requirements; and he has maintained a residence in the United States since the date of admission, or (ii) an alien who meets all of the foregoing requirements except that if he were, in fact, a citizen of the United States a passport would not have been required, or it had been individually waived, and was erroneously admitted as a United States citizen by a Service officer. For the purposes of all of the foregoing, the terms "child" and "parent" shall be defined as in section 101(b) of the Immigration and Nationality Act, as amended.

(2) An alien admitted to the United States before July 1, 1948, in possession of a section 4(a) 1924 Act nonquota immigration visa issued in accordance with State Department regulations, including a child of a United States citizen after he reached the age of 21, in the absence of fraud or misrepresentation; a member of a naturalized person's family who was admitted to the United States as a United States citizen or as a section 4(a) 1924 Act nonquota immigrant on the basis of that naturalization, unless he knowingly participated in the unlawful naturalization of the parent or spouse rendered void by cancellation, or knew

at any time prior to his admission to the United States of the cancellation; and a member of a naturalized person's family who knew at any time prior to his admission to the United States of the cancellation of the naturalization of his parent or spouse but was admitted to the United States as a United States citizen pursuant to a State Department or Service determination based upon a then prevailing administrative view, provided the State Department or Service knew of the cancellation.

[23 FR 9119, Nov. 26, 1958, as amended at 24 FR 2583, Apr. 3, 1959; 24 FR 6476, Aug. 12, 1959; 25 FR 581, Jan. 23, 1960; 31 FR 535, Jan. 15, 1966]

§ 101.2 Presumption of lawful admission; entry under erroneous name or other errors.

An alien who entered the United States as either an immigrant or nonimmigrant under any of the following circumstances shall be regarded as having been lawfully admitted in such status, except as otherwise provided in this part: An alien otherwise admissible whose entry was made and recorded under other than his full true and correct name or whose entry record contains errors in recording sex, names of relatives, or names of foreign places of birth or residence, provided that he establishes by clear, unequivocal, and convincing evidence that the record of the claimed admission relates to him, and, if entry occurred on or after May 22, 1918, if under other than his full, true and correct name that he also establishes that the name was not adopted for the purpose of concealing his identity when obtaining a passport or visa, or for the purpose of using the passport or visa of another person or otherwise evading any provision of the immigration laws, and that the name used at the time of entry was one by which he had been known for a sufficient length of time prior to making application for a passport or visa to have permitted the issuing authority or authorities to have made any necessary investigation concerning him or that his true identity was known to such officials.

[32 FR 9622, July 4, 1967]

§ 101.3 Creation of record of lawful permanent resident status for person born under diplomatic status in the United States.

(a) *Person born to foreign diplomat.* (1) *Status of person.* A person born in the United States to a foreign diplomatic officer accredited to the United States, as a matter of international law, is not subject to the jurisdiction of the United States. That person is not a United States citizen under the Fourteenth Amendment to the Constitution. Such a person may be considered a lawful permanent resident at birth.

(2) *Definition of foreign diplomatic officer.* "Foreign diplomatic officer" means a person listed in the State Department Diplomatic List, also known as the Blue List. It includes ambassadors, ministers, chargés d'affaires, counselors, secretaries and attachés of embassies and legations as well as members of the Delegation of the Commission of the European Communities. The term also includes individuals with comparable diplomatic status and immunities who are accredited to the United Nations or to the Organization of American States, and other individuals who are also accorded comparable diplomatic status.

(b) *Child born subject to the jurisdiction of the United States.* A child born in the United States is born subject to the jurisdiction of the United States and is a United States citizen if the parent is not a "foreign diplomatic officer" as defined in paragraph (a)(2) of this section. This includes, for example, a child born in the United States to one of the following foreign government officials or employees:

(1) Employees of foreign diplomatic missions whose names appear in the State Department list entitled "Employees of Diplomatic Missions Not Printed in the Diplomatic List," also known as the White List; employees of foreign diplomatic missions accredited to the United Nations or the Organization of American States; or foreign diplomats accredited to other foreign states. The majority of these individuals enjoy certain diplomatic immunities, but they are not "foreign diplomatic officers" as defined in

paragraph (a)(2) of this section. The immunities, if any, of their family members are derived from the status of the employees or diplomats.

(2) Foreign government employees with limited or no diplomatic immunity such as consular officials named on the State Department list entitled "Foreign Consular Officers in the United States" and their staffs.

(c) *Voluntary registration as lawful permanent resident of person born to foreign diplomat.* Since a person born in the United States to a foreign diplomatic officer is not subject to the jurisdiction of the United States, his/her registration as a lawful permanent resident of the United States is voluntary. The provisions of section 262 of the Act do not apply to such a person unless and until that person ceases to have the rights, privileges, exemptions, or immunities which may be claimed by a foreign diplomatic officer.

(d) *Retention of lawful permanent residence.* To be eligible for lawful permanent resident status under paragraph (a) of this section, an alien must establish that he/she has not abandoned his/her residence in the United States. One of the tests for retention of lawful permanent resident status is continuous residence, not continuous physical presence, in the United States. Such a person will not be considered to have abandoned his/her residence in the United States solely by having been admitted to the United States in a nonimmigrant classification under paragraph (15)(A) or (15)(G) of section 101(a) of the Act after a temporary stay in a foreign country or countries on one or several occasions.

(Secs. 101(a)(20), 103, 262, 264 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1101(a)(20), 1103, 1302, 1304)

[47 FR 940, Jan. 8, 1982]

§ 101.4 Registration procedure.

The procedure for an application for creation of a record of lawful permanent residence and an Alien Registration Receipt Card, Form I-551, for a person eligible for presumption of lawful admission for permanent residence under § 101.1 or § 101.2 or for lawful permanent residence as a person born in the United States to a foreign diplomatic officer under § 101.3 is described in § 264.2 of this chapter.

(Secs. 101(a)(20), 103, 262, 264 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1101(a)(20), 1103, 1302, 1304)

[47 FR 941, Jan. 8, 1982]

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

Sec.

103.1 Delegations of authority.
103.2 Applications, petitions, and other documents.
103.3 Denials, appeals and precedent decisions.
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103.5 Reopening or reconsideration.
103.5a Service of notification, decisions, and other papers by the Service.
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103.10 Requests for records under the Freedom of Information Act.
103.20 Purpose and scope.
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103.30 Accounting for disclosures.
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103.32 Information forms.
103.33 Contracting record systems.
103.34 Security of records systems.
103.35 Use and collection of Social Security numbers.
103.36 Employee standards of conduct with regard to privacy.

AUTHORITY: Sec. 501, 65 Stat. 290, sec. 103, 66 Stat. 173; 31 U.S.C. 483a, 8 U.S.C. 1103. Interpret or apply secs. 281, 382, 343, 344, 405, 66 Stat. 230, 252, 263, 264, 280; 8 U.S.C. 1351, 1443, 1454, 1455, 1101 and note; 7 U.S.C. 2243, unless otherwise noted.

SOURCE: 40 FR 44481, Sept. 26, 1975, unless otherwise noted.

§ 103.1 Delegations of authority.

(a) *Deputy Commissioner.* Without divesting the Commissioner of any of the powers, duties, and privileges delegated by the Attorney General, coextensive authority is delegated to the Deputy Commissioner. The Deputy Commissioner is delegated responsibility for providing general direction to and supervision of the Executive Associate Commissioner, Associate Commissioner for Enforcement, Associate Commissioner for Management, and the regional commissioners.

(b) *Executive Associate Commissioner.* Under the direction of the Commissioner and Deputy Commissioner, the Executive Associate Commissioner assists in all aspects of the administration of the Immigration and Naturalization Service and is delegated the authority and responsibility for providing general direction to and supervision of the Associate Commissioner for Information Systems, Associate Commissioner for Examinations, and the Director for Plans and Analysis, and also to direct and support Service overseas operations.

(c) *Associate Commissioner for Enforcement.* Under the direction of the Deputy Commissioner, the Associate Commissioner for Enforcement is delegated authority and responsibility for program planning, development, coordination, evaluation, counseling, and staff direction of the Border Patrol, Investigations, Detention and Deportation, Anti-Smuggling, and Intelligence programs, and general direction and supervision of:

(1) Assistant Commissioner for Border Patrol,

(2) Assistant Commissioner for Investigations,

(3) Assistant Commissioner for Detention and Deportation,

(4) Assistant Commissioner for Anti-Smuggling, and

(5) Assistant Commissioner for Intelligence.

(d) *Associate Commissioner for Management.* Under the direction of the Deputy Commissioner, the Associate Commissioner for Management is delegated authority and responsibility for program planning, development, coordination, evaluation, counseling, and staff direction of the Comptroller, Personnel and Training, Administration, Equal Employment Opportunity, and Evaluation programs, and general direction to and supervision of:

(1) Comptroller,

(2) Assistant Commissioner for Personnel and Training,

(3) Assistant Commissioner for Administration,

(4) Director for Equal Employment Opportunity, and

(5) Director for Evaluation.

(e) *Associate Commissioner for Information Systems.* Under the direction of the Executive Associate Commissioner, the Associate Commissioner for Information Systems is delegated authority and responsibility for program planning, development, coordination, evaluation, counseling, and staff direction of the Records Systems, Data Systems, Policy Directives and Instructions, and Project Control and Integration programs, and general direction to and supervision of:

(1) Assistant Commissioner for Records Systems

(2) Assistant Commissioner for Data Systems

(3) Director for Policy Directives and Instructions, and

(4) Assistant Commissioner for Project Control and Integration.

(f) *Associate Commissioner for Examinations.*

(1) Under the direction of the Executive Associate Commissioner, the Associate Commissioner for Examinations is delegated authority and responsibility for program planning, development, coordination, counseling, and staff direction of Adjudication and Naturalization, Inspections, Refugees, Asylum and Parole, and Outreach programs and general direction to and supervision of:

(i) Assistant Commissioner for Adjudications.

(ii) Assistant Commissioner for Inspections.

(iii) Assistant Commissioner for Refugees, Asylum Parole.

(iv) Director for Outreach Program, and

(v) Chief, Administrative Appeals Unit.

(2) In addition, the Associate Commissioner, Examinations exercises appellate jurisdiction over decisions on:

(i) Breaching of bonds under § 103.6(e) of this part;

(ii) Third and sixth preference petitions under § 204.1(c) of this title except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(14) of the Act;

(iii) Indochinese refugee applications for adjustment of status under § 245.2 (a)(4) and (e) of this title;

(iv) Revoking approval of certain petitions under § 205.2 of this title;

(v) Applications for permission to reapply for admission to the United States after deportation or removal under § 212.2 of this title;

(vi) Applications for waiver of certain grounds of excludability under § 212.7(a) of this title;

(vii) Applications for waiver of the two-year foreign residence requirement under § 212.7(c) of this title;

(viii) Petitions for approval of schools under § 214.3 of this title;

(ix) Proceedings by immigration judges to withdraw the approval of petitions by schools, as provided in § 214.4(j) of this title;

(x) Petitions for temporary workers or trainees and fiancees or fiances of U.S. citizens under § 214.2 of this title;

(xi) Applications for issuance of reentry permits under § 223.1 of this title;

(xii) Applications for refugee travel documents under § 223a.4 of this title;

(xiii) Applications for benefits of section 13 of the Act of September 11, 1957, as amended, under § 245.3 of this title;

(xiv) Adjustment of status of certain resident aliens to nonimmigrants under § 247.12(b) of this title;

(xv) Applications to preserve residence for naturalization purposes under § 316a.21(c) of this title;

(xvi) Applications for certificates of citizenship under § 341.6 of this title;

(xvii) Administration cancellation of certificates, documents, and records under § 342.8 of this title;

(xviii) Applications for certificates of naturalization or repatriation under § 343.1 of this title;

(xix) Applications for new naturalization or citizenship papers under § 343a.1(c) of this title;

(xx) Applications for special certificates of naturalization under § 343b.11(b) of this title;

(xxi) Applications by organizations to be listed on the Service listing of free legal services program and removal therefrom under Part 292a of this title;

(xxii) Petitions to classify Amerasians under Pub. L. 97-359 as the children of United States citizens;

(xxiii) Revoking approval of certain petitions, as provided in § 214.2 of this title;

(xxiv) Orphan petitions under § 204.1(b) of this title; and

(xxv) Applications for advance processing of orphan petitions under § 204.1(b)(3) of this title.

(xxvi) Invalidation of a temporary labor certification issued by the Governor of Guam under § 214.2(h)(3)(v) of this title.

(g) *General Counsel.* Under the direction of the Commissioner, the General Counsel is delegated the responsibility of chief legal officer for the Service and is assisted by a Deputy General Counsel and staff. The General Counsel advises the Commissioner and staff on legal matters, prepares legislative reports, assists in litigation, including preparing briefs and other legal memoranda as necessary. Acting through the regional counsels, the General Counsel is delegated the responsibility for overseeing the professional activities of all Service attorneys assigned to field offices, making recommendations to the Department of Justice on all personnel matters involving Service attorneys, including attorney discipline which requires final action or approval by the Associate Attorney General or other designated Department of Justice official. The General Counsel is delegated authority and the responsibility to perform the functions conferred upon the Commissioner with respect to production or disclosure in federal proceedings as provided in 28 CFR 16.24(a).

(h) *Director for Congressional and Public Affairs.* Under the direction of the Commissioner, and assisted by a Deputy Director for Congressional and

Public Affairs, the Director for Congressional and Public Affairs is delegated responsibility for program planning, development, coordination, and execution of programs relating to Congressional and public affairs of the Service, including Public Information Program activities.

(i) *Director for Professional Responsibility.* Under the direction of the Commissioner, the Director for Professional Responsibility is delegated authority, and responsibility for program planning, coordinating, evaluating, reporting, and counseling relating to the Professional Responsibility Program. The Director for Professional Responsibility reports directly to the Commissioner and to a designated Department of Justice official in matters relating to the Professional Responsibility Program.

(j) *Director for Field Inspections and Audit.* Under the direction of the Commissioner, the Director for Field Inspections and Audit is delegated the responsibility for program planning, development, coordination, and execution of field inspections and audits and to report to the Commissioner, in a timely manner, the results and recommendations of all completed field inspections and audits.

(k) [Reserved]

(l) *Regional Commissioners.* Under the general supervision of the Commissioner and direction of the Deputy Commissioner, regional commissioners are delegated the authority and responsibility for the activities of the Service within their respective regional areas including authority to:

(1) Settle tort claims of $25,000 or less under 28 U.S.C. 2672; and

(2) Compromise, suspend, or terminate collection of claims of the United States not exceeding $20,000 exclusive of interest under 31 U.S.C. 951 and 952.

(m) *Regional Counsels.* In addition to other legal activities performed under the executive direction of the General Counsel, regional counsels are delegated authority within their respective regional areas, concurrent with that of the General Counsel, to approve production or disclosure in federal proceedings as provided in 28 CFR 16.24(a).

(n) *District Directors.* District directors within the United States are under the direction of their respective regional commissioners. District directors who are assigned overseas are under the direction of the Executive Associate Commissioner. District directors are delegated the authority and responsibility to grant or deny any application or petition submitted to the Service, to initiate any authorized proceeding in their respective districts, and to exercise the authorities under §§ 242.1(a), 242.2(a), and 242.7 of this title without regard to geographical limitations. District directors, acting district directors, and deputy district directors are delegated authority to conduct the proceeding provided for in § 252.2 of this title.

(o) *Officers in Charge*—(1) *General.* Officers in charge have program and administrative supervisory responsibility for all personnel assigned to their office. Officers in charge have responsibility for the supervision of inspection at ports of entry and the authorization of extensions of nonimmigrant admission periods and of voluntary departure prior to the commencement of deportation hearings. Officers in charge in Districts 33, 35, and 37 have the same powers with respect to petitions and applications submitted by citizens or aliens residing in their respective areas as are conferred on district directors in the United States. The officers in charge in the places enumerated in § 212.1(i) of this chapter have the authority to act on requests for waiver of visa and passport requirements under the provisions of section 212(d)(4)(A) of the Act.

(2) The officers in charge of the offices located in Frankfurt, Germany; Athens, Greece; Rome, Italy; Naples, Italy; Vienna, Austria; Manila, Philippines; Seoul, Korea; Singapore, Republic of Singapore; Bangkok, Thailand; Hong Kong, B.C.C.; Mexico City, Mexico; Guadalajara, Mexico; Monterrey, Mexico; and Panama City, Republic of Panama, are authorized to perform the following functions: Authorize waivers of grounds of excludability under sections 212 (h) and (i) of the Act; adjudicate applications for permission to reapply for admission to the United States after deportation or

removal if filed by an applicant for an immigrant visa in conjunction with an application for waiver of grounds of excludability under section 212 (h) or (i) of the Act, or if filed by an applicant for a nonimmigrant visa under section 101(a)(15)(K) of the Act; approve visa petitions of any immediate relative or preference status except third and sixth preference; in cases in which the Department of State had delegated recommending power to the consular officer, approve recommendations made by consular officers for waiver of grounds of excludability in behalf of nonimmigrant visa applicants under section 212(d)(3) of the Act and concur in proposed waivers by consular officers of the requirement of visa or passport by a nonimmigrant on the basis of unforeseen emergency; exercise discretion to grant applications for the benefits of sections 211 and 212(c) of the Act; process Form I 90 applications and deliver duplicate Forms I 551; and process Form N 565 applications and deliver certificates issued thereunder; and may consider applications of aliens seeking classification as refugees under section 207 of the Act.

(3) The officers in charge of the offices located in the following places are authorized to perform the function of preinspection of passengers and crews on aircraft and surface vessels departing directly to the U.S. mainland: Hamilton, Bermuda; Freeport, Bahamas; Nassau, Bahamas and Calgary, Alberta, Canada.

(4) The Officer in Charge of the office in Montreal, Canada is authorized to perform preinspection of passengers and crew of aircraft departing directly to the United States mainland and to authorize or deny waivers of grounds of excludability under section 212 (h) and (i); also, to approve or deny applications for permission to reapply for admission to the United States after deportation or removal, when filed in conjunction with an application for waiver of grounds of excludability under sections 212 (h) or (i) of the Act.

(p) *Chief Patrol Agents.* Under the direction of their respective regional commissioners, chief patrol agents are delegated authority and responsibility for the Border Patrol activities of the Service within their respective sectors, including exercising the authority in section 242(b) of the Act to permit aliens to depart voluntarily from the United States prior to commencement of hearing.

(q) *Immigration Officer.* Any immigration inspector, immigration examiner, border patrol agent, aircraft pilot, airplane pilot, helicopter pilot, deportation officer, detention officer, detention service officer, detention guard, investigator, special agent, intelligence officer, intelligence agent, general attorney, applications adjudicator, contact representative, or senior or supervisory officer of such employees is hereby designated as an immigration officer authorized to exercise the powers and duties of such officer as specified by the Act and this chapter.

(r) *Special Representative of the Commissioner.* The Special Representative of the Commissioner, as ranking Immigration and Naturalization Service official in the Rome district, will exercise the full powers and authorities of the position of District Director as outlined in paragraph (n) of this section.

(s) *Regional Adjudications Center Directors.* Under the direction of their respective regional commissioners, regional adjudications center directors have program, administrative and supervisory responsibility for all personnel assigned to their centers. Regional adjudications center directors are delegated the authority and responsibility to approve or deny any application or petition adjudicated at their centers.

(Title I of Pub. L. 95-145 enacted October 28, 1977 (91 Stat. 1223), sec. 103 of the Immigration and Nationality Act (8 U.S.C. 1103). Interpret or apply secs. 101, 212, 242 and 245 (8 U.S.C. 1101, 1182, 1252 and 1255); secs. 103, 221, 261-265 (8 U.S.C. 1103, 1201, 1301-1305))

[40 FR 30468, July 21, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 103.1, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 103.2 Applications, petitions, and other documents.

(a) *General.* Every application, petition, or other document submitted on a form prescribed by this chapter shall be executed and filed in accordance with the instructions contained on the form, such instructions being hereby incorporated into the particular section of the regulations requiring its submission. The native form of a name may also be required if such a document has been executed in an anglicized version thereof. A parent, guardian, or other adult having a legitimate interest in a person who is under 14 years of age may file on such a person's behalf, and a guardian of a mentally incompetent person may file on such a person's behalf. Any required oath may be administered by an immigration officer or person generally authorized to administer oaths, including persons so authorized by Article 136 of the Uniform Code of Military Justice. Applications or petitions received in any Service office shall be stamped to show the time and date of their actual receipt and, unless otherwise specified in Part 204 or Part 245 of this chapter or returned because they are improperly executed, shall be regarded as filed when so stamped. An application or petition which is presented at an office of this Service by a travel agent, a notary public, or by any individual other than the applicant, petitioner, or an attorney or representative authorized and qualified to represent the applicant or petitioner pursuant to § 292.1 of this chapter, shall be disposed of in the same manner as an application or petition received through the mail. The person submitting the application or petition shall be advised that, since he is not regarded as the authorized representative of the applicant or petitioner, the applicant or petitioner will be notified directly regarding the action taken.

(b) *Evidence*—(1) *Requirements.* Each application or petition must be accompanied by the documents required by the particular section of the regulations under which submitted. Form I-134 may be used if an affidavit of support would be helpful in resolving any public charge aspect. All accompanying documents, other than certificates of naturalization or certificates of citizenship, must be submitted in the original and be accompanied by a copy. Except as provided in §§ 204.2(j), 212.8(b)(4), 214.2(h)(5), 214.2(k) and 214.2(l)(2) of this chapter, a copy unaccompanied by an original will be accepted only if the accuracy of the copy has been certified by an immigration or consular officer who has examined the original. A foreign document must be accompanied by an English translation in accordance with the instructions on the application or petition form. The translator must certify the he/she is competent to translate, and that the translation is accurate. If any required document is unavailable, church or school records, or other evidence pertinent to the facts in issue, may be submitted. If such documents are unavailable, affidavits may be submitted. The Service may require proof of unsuccessful efforts to obtain documents claimed to be unavailable. The Service may also require the submission of additional evidence, including blood tests, may require the taking of testimony, and may direct any necessary investigation. When any statement is taken from and signed by a person, he/she shall be furnished a copy thereof, on request, without fee. Any allegations made in addition to, or in substitution for, those originally made shall be under oath and filed in the same manner as the original application, petition, or other document or noted on the original application, petition, or document and acknowledged under oath thereon. The status of an applicant or petitioner who claims that he/she is a lawful permanent resident alien of the United States will be verified from official records of the Service. Under the conditions hereinafter prescribed, the term "official records," as used herein, includes Service files, arrival manifests, arrival records, Service index cards, Immigrant Identification Cards, Certificates of Registry, Declarations of Intention issued after July 1, 1929, Alien Registration Receipt Cards (Form AR-3, AR-103, I-151, or I-551), passports, and reentry permits. To constitute an "official record" the Service index card must bear a designated immigrant visa symbol and have been prepared in processing immigrant admissions or adjustments to permanent resident status. The other cards, certificates, declarations, permits, and passports must have been issued or have been endorsed by the Service to show admission for permanent residence. Except as otherwise provided in Part 101 of this chapter, and in the absence of countervailing evidence, such official records shall be regarded as establishing lawful admission for permanent residence.

(2) *Inspection of evidence.* An applicant or petitioner shall be permitted to inspect the record of proceeding which constitutes the basis for the decision, except as hereinafter provided. If the decision will be adverse to the applicant or petitioner on the basis of derogatory evidence considered by the Service and of which the applicant or petitioner is unaware, he shall be advised thereof and offered an opportunity to rebut it and present evidence in his behalf before the decision is rendered, except that classified evidence shall not be made available to him. Any explanation, rebuttal, or evidence presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding. A determination of statutory ineligibility shall not be valid unless based on evidence contained in the record of proceeding. In exercising discretionary power when considering an application or petition, the district director or officer in charge, in any case in which he is authorized to make the decision, may consider and base his decision on information not contained in the record and not made available for inspection by the applicant or petitioner, provided the regional commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security. Whenever he believes he can do so consistently with safeguarding both the information and its source, the regional commissioner should direct that the applicant or petitioner be given notice of the general nature of the information and an opportunity to offer opposing evidence. The regional commissioner's authorization to use such classified information shall be made a part of the record. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

(Secs. 103, 221, 261-265 (8 U.S.C. 1103, 1201, 1301-1305))

[29 FR 11956, Aug. 21, 1964, as amended at 30 FR 14772, Nov. 30, 1965; 32 FR 9622, July 4, 1967; 33 FR 11644, Aug. 16, 1968; 39 FR 43055, Dec. 10, 1974; 44 FR 52169, Sept. 7, 1979; 47 FR 44990, Oct. 13, 1982; 50 FR 11841, Mar. 26, 1985]

§ 103.3 Denials, appeals, and precedent decisions.

(a) *Denials and appeals.* Whenever a formal application or petition filed under § 103.2 is denied, the applicant will be given written notice setting forth the specific reasons for the denial. If the notification is made on Form I-292, the signed duplicate constitutes the order of denial. When the applicant is entitled to appeal to another Service officer, the notice will advise the applicant that there is an appeal from the decision, and that appeal must be taken within 15 days after the service of the notification of the decision. The appeal must be taken by filing Form I-290B (Notice of Appeal), which must be furnished with the written notice. The Form I-290B must be accompanied by the appropriate fee and, if desired, a supporting brief. For good cause shown, the time within which the brief may be submitted may be extended. The party taking the appeal may, prior to appellate decision, file a written withdrawal of the appeal. The appeal, cross-appeal, answers to the appeal and accompanying briefs, if any, will become part of the record of proceeding and, if filed by an officer of the Service, a copy must be served on the party affected.

(b) *Dismissal of appeals.* Notwithstanding the provisions of paragraph (c) of this section, the officer to whom an appeal is taken may deny oral argument and dismiss any appeal when (1) the party concerned fails to specify the reasons for his appeal, or (2) the appeal is patently frivolous.

(c) *Oral argument.* If an appeal is taken, request for oral argument, if desired, shall be included in the notice of appeal or supporting brief, providing such brief is submitted within the prescribed appeal period or any extension of time granted for submission of a supporting brief. Any request for oral argument must set forth facts explaining why such argument is necessary to supplement the appeal. The officer to whom the appeal is taken shall have sole authority to approve or reject a request for oral argument. Upon approval of a request for oral argument, the appellate authority shall set the time, date, place, and manner by which the argument shall be heard.

(d) *Decisions on appeal.* The decision of the Service officer considering the appeal shall be in writing and a copy thereof shall be served upon the applicant, petitioner, or other party affected, or his attorney or representative of record.

(e) *Precedent decisions.* In addition to the decisions of the Attorney General and the Board, referred to in § 3.1(g) of this chapter, Service officers' decisions selected by the Commissioner shall serve as precedents in all proceedings involving the same issue or issues and, except as they may be modified or overruled by subsequently selected decisions, shall be binding on all officers and employees of the Service in the administration of the Act. All such decisions shall be published and made available to the public in the manner provided in § 103.9(a).

[31 FR 3062, Feb. 24, 1966, as amended at 37 FR 927, Jan. 21, 1972; 48 FR 36441, Aug. 11, 1983; 49 FR 7355, Feb. 29, 1984]

§ 103.4 Certifications.

The Commissioner or the Deputy Commissioner, may direct that any case or classes of cases be certified for decision. Regional commissioners, district directors and officers in charge in districts 33, 35, and 37 may certify their decisions to the appellate authority designated in this chapter when the case involves an unusually complex or novel question of law or fact. The alien or other party affected shall be given notice on Form I-290C of such certification and of his right to submit a brief within 10 days from receipt of the notice. Cases within the appellate jurisdiction of the Service shall be certified only after an initial decision has been made. Decisions for which no appeal procedure exists may be certified to the Commissioner in the same manner as decisions over which the Commissioner holds appellate authority. In cases within § 3.1(b) of this chapter, the decision of the officer to whom certified, whether made initially or upon review, shall constitute the base decision of the Service from which an appeal may be taken to the Board in accordance with the applicable parts of this chapter. The decision of the Service officer to whom the case has been certified shall be in writing and a copy thereof shall be served upon the applicant, petitioner, or other party affected, or his attorney or representative of record.

[48 FR 43161, Sept. 22, 1983]

§ 103.5 Reopening or reconsideration.

Except as otherwise provided in Part 242 of this chapter, a proceeding authorized under this chapter may be reopened or the decision made therein reconsidered for proper cause upon motion made by the party affected and granted by the officer who has jurisdiction over the proceeding or who made the decision. When the alien is the moving party, a motion to reopen or a motion to reconsider shall be filed in duplicate, accompanied by a supporting brief, if any, and the appropriate fee specified by and remitted in accordance with the provisions of § 103.7, with the district director in whose district the proceeding was conducted for transmittal to the officer having jurisdiction. When an officer of the Service is the moving party, a copy of the motion shall be served on the alien or other party in interest and the motion, together with proof of service, shall be filed directly with the officer having jurisdiction. The party opposing the motion shall have 10 days from the date of service thereof within which he may submit a brief, which period may be extended. If the officer who originally decided the case is unavailable, the motion may be referred to another officer. A motion to reopen shall state the new facts to be proved at the reopened proceeding and shall be supported by affidavits or other evidentiary material. A motion to reconsider shall state the reasons for reconsideration and shall be supported by such precedent decisions as are pertinent. Motions to reopen or reconsider shall state whether the validity of the order has been or is the subject of any judicial proceeding and, if so, the nature and date thereof, the court in which such proceeding took place or is pending, and its result or status. Rulings upon motions to reopen or motions to reconsider shall be by written decision. The filing of a motion to reopen or a motion to reconsider or of a subsequent application after notice of denial shall not, unless the Service directs otherwise, serve to stay the execution of any decision made in the case or to extend a previously set departure date.

[27 FR 7562, Aug. 1, 1962, as amended at 30 FR 12772, Oct. 7, 1965; 32 FR 271, Jan. 11, 1967]

§ 103.5a Service of notification, decisions, and other papers by the Service.

This section states authorized means of service by the Service on parties and on attorneys and other interested persons of notices, decisions, and other papers (except warrants and subpoenas) in administrative proceedings before Service officers as provided in this chapter.

(a) *Definitions*—(1) *Routine service.* Routine service consists of mailing a copy by ordinary mail addressed to a person at his last known address.

(2) *Personal service.* Personal service, which shall be performed by a Government employee, consists of any of the following, without priority or preference:

(i) Delivery of a copy personally;

(ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;

(iii) Delivery of a copy at the office of an attorney or other person, including a corporation, by leaving it with a person in charge;

(iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

(b) *Effect of service by mail.* Whenever a person has the right or is required to do some act within a prescribed period after the service of a notice upon him and the notice is served by mail, 3 days shall be added to the prescribed period. Service by mail is complete upon mailing.

(c) *When personal service required*—(1) *Generally.* In any proceeding which is initiated by the Service, with proposed adverse effect, service of the initiating notice and of notice of any decision by a Service officer shall be accomplished by personal service, except as provided in § 242.1(c) of this chapter.

(2) *Persons confined, minors, and incompetents*—(i) *Persons confined.* If a person is confined in a penal or mental institution or hospital and is competent to understand the nature of the proceedings initiated against him, service shall be made both upon him and upon the person in charge of the institution or the hospital. If the confined person is not competent to understand, service shall be made only on the person in charge of the institution or hospital in which he is confined, such service being deemed service on the confined person.

(ii) *Incompetents and minors.* In case of mental incompetency, whether or not confined in an institution, and in the case of a minor under 14 years of age, service shall be made upon the person with whom the incompetent or the minor resides; whenever possible, service shall also be made on the near relative, guardian, committee, or friend.

(d) *When personal service not required.* Service of other types of papers in proceedings described in paragraph (c) of this section, and service of any type of papers in any other proceedings, may be accomplished either by routine service or by personal service.

[37 FR 11470, June 8, 1972, as amended at 39 FR 23247, June 27, 1974]

§ 103.6 Surety bonds.

(a) *Posting of surety bonds*—(1) *Extension agreements; consent of surety; collateral security.* All surety bonds posted in immigration cases shall be executed on Form I-352, a copy of which, and any rider attached thereto, shall be furnished the obligor. A district director is authorized to approve a bond, a formal agreement to extension of liability of surety, a request for delivery of collateral security to a duly appointed and undischarged administrator or executor of the estate of a deceased depositor, and a power of attorney executed on Form I-312. All other matters relating to bonds, including a power of attorney not executed on Form I-312 and a request for delivery of collateral security to other than the depositor or his approved attorney in fact, shall be forwarded to the regional commissioner for approval.

(2) *Bond riders*—(i) *General.* Bond riders shall be prepared on Form I-351 and attached to Form I-352. If a condition to be included in a bond is not on Form I-351, a rider containing the condition shall be executed.

(ii) *Condition against unauthorized employment.* A condition barring employment shall be included in an appearance and delivery bond in connection with a deportation proceeding or bond posted for the release of an alien in exclusion proceedings, unless the District Director determines that employment is appropriate.

(iii) *Factors to be considered.* Only those aliens who upon application under § 109.1(b) of this chapter establish compelling reasons for granting employment authorization may be authorized to accept employment. Among the factors which may be considered when an application is made, are the following:

(A) Safeguarding employment opportunities for United States citizens and lawful permanent resident aliens;

(B) Prior immigration violations by the alien;

(C) Whether there is a reasonable basis for considering discretionary relief; and

(D) Whether a United States citizen or lawful permanent resident spouse or children are dependent upon the alien for support, or other equities exist.

(b) *Acceptable sureties.* Either a company holding a certificate from the Secretary of the Treasury under 6 U.S.C. 6-13 as an acceptable surety on Federal bonds, or a surety who deposits cash or U.S. bonds or notes of the class described in 6 U.S.C. 15 and Treasury Department regulations issued pursuant thereto and which are not redeemable within 1 year from the date they are offered for deposit is an acceptable surety.

(c) *Cancellation*—(1) *Public charge bonds.* A public charge bond posted for an immigrant shall be cancelled when the alien dies, departs permanently from the United States or is naturalized, provided the immigrant did not become a public charge prior to death, departure, or naturalization. The district director may cancel a public charge bond at any time if he/she finds that the immigrant is not likely to become a public charge. A bond may also be cancelled in order to allow substitution of another bond. A public charge bond shall be cancelled by the district director upon review following the fifth anniversary of the admission of the immigrant, provided that the alien has filed Form I-356, Request for Cancellation of Public Charge Bond, and the district director finds that the immigrant did not become a public charge prior to the fifth anniversary. If Form I-356 is not filed, the bond shall remain in effect until the form is filed and the district director reviews the evidence supporting the form and renders a decision to breach or cancel the bond.

(2) *Maintenance of status and departure bonds.* When the status of a nonimmigrant who has violated the conditions of his admission has been adjusted as a result of administrative or legislative action to that of a permanent resident retroactively to a date prior to the violation, any outstanding maintenance of status and departure bond shall be canceled. If an application for adjustment of status is made by a nonimmigrant while he is in lawful temporary status, the bond shall be canceled if his status is adjusted to that of a lawful permanent resident or if he voluntarily departs within any period granted to him. As used in this paragraph, the term "lawful temporary status" means that there must not have been a violation of any of the conditions of the alien's

nonimmigrant classification by acceptance of unauthorized employment or otherwise during the time he has been accorded such classification, and that from the date of admission to the date of departure or adjustment of status he must have had uninterrupted Service approval of his presence in the United States in the form of regular extensions of stay or dates set by which departure is to occur, or a combination of both. An alien admitted as a nonimmigrant shall not be regarded as having violated his nonimmigrant status by engaging in employment subsequent to his proper filing of an application for adjustment of status under section 245 of the Act and Part 245 of this chapter. A maintenance of status and departure bond posted at the request of an American consular officer abroad in behalf of an alien who did not travel to the United States shall be canceled upon receipt of notice from an American consular officer that the alien is outside the United States and the nonimmigrant visa issued pursuant to the posting of the bond has been canceled or has expired.

(3) *Substantial performance.* Substantial performance of all conditions imposed by the terms of a bond shall release the obligor from liability.

(d) *Bond schedules*—(1) *Blanket bonds for departure of visitors and transits.* The amount of bond required for various numbers of nonimmigrant visitors or transits admitted under bond on Forms I-352 shall be in accordance with the following schedule:

Aliens

1 to 4—$500 each.
5 to 9—$2,500 total bond.
10 to 24—$3,500 total bond.
25 to 49—$5,000 total bond.
50 to 74—$6,000 total bond.
75 to 99—$7,000 total bond.
100 to 124—$8,000 total bond.
125 to 149—$9,000 total bond.
150 to 199—$10,000 total bond.
200 or more—$10,000 plus $50 for each alien over 200.

(2) *Blanket bonds for importation of workers classified as nonimmigrants under section 101(a)(15)(H).* The following schedule shall be employed by district directors when requiring employers or their agents or representatives to post bond as a condition to importing alien laborers into the United States from the West Indies, the British Virgin Islands, or from Canada:

Less than 500 workers—$15 *each*
500 to 1,000 workers—$10 *each*
1,000 or more workers—$5 *each*

A bond shall not be posted for less than $1,000 or for more than $12,000 irrespective of the number of workers involved. Failure to comply with conditions of the bond will result in the employer's liability in the amount of $200 as liquidated damages for each alien involved.

(e) *Breach of bond.* A bond is breached when there has been a substantial violation of the stipulated conditions. A final determination that a bond has been breached creates a claim in favor of the United States which may not be released or discharged by a Service officer. The district director having custody of the file containing the immigration bond executed on Form I-352 shall determine whether the bond shall be declared breached or cancelled, and shall notify the obligor on Form I-323 or Form I-391 of the decision, and, if declared breached, of the reasons therefor, and of the right to appeal in accordance with the provisions of this part.

[31 FR 11713, Sept. 7, 1966, as amended at 32 FR 9622, July 4, 1967; 33 FR 5255, Apr. 2, 1968; 33 FR 10504, July 24, 1968; 34 FR 1008, Jan. 23, 1969; 34 FR 14760, Sept. 25, 1969; 39 FR 12334, Apr. 5, 1974; 40 FR 42852, Sept. 17, 1975; 48 FR 51144, Nov. 7, 1983; 49 FR 24011, June 11, 1984]

§ 103.7 Fees.

(a) *Remittances.* Fees prescribed within the framework of 31 U.S.C. 483a shall be submitted with any formal application or petition prescribed in this chapter and shall be in the amount prescribed by law or regulation. When any discretionary relief in exclusion or deportation proceedings is granted absent an application and fee therefor, the district director having jurisdiction over the place where the original proceeding was conducted shall require the filing of the application and the payment of the fee. Every remittance shall be accepted subject to collection. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn. A receipt issued by a Service officer for any such remittance shall not be binding if the remittance is found uncollectible. Remittances must be drawn on a bank or other institution located in the United States and be payable in United States currency. Fees in the form of postage stamps shall not be accepted. Remittances shall be made payable to the "Immigration and Naturalization Service," except that in case of applicants residing in the Virgin Islands of the United States, the remittances shall be made payable to the "Commissioner of Finance of the Virgin Islands," and, in the case of applicants residing in Guam, the remittances shall be made payable to the "Treasurer, Guam." If application is submitted from outside the United States, remittance may be made by bank international money order or foreign draft drawn on a financial institution in the United States and payable to the Immigration and Naturalization Service in United States currency.

(b) *Amounts of fees*—(1) The following fees and charges are prescribed:

Form G-641. For filing application for verification of information contained in Service records—$15.00

For certification of true copies, each—$2.00

For attestation under seal—$2.00

Form I-17. For filing application for school approval, except in the case of a school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof—$50.00

Form I-90. For filing application for Alien Registration Receipt Card (Form I-551) in lieu of an obsolete card or in lieu of one lost, mutilated or destroyed, or in a changed name—$15.00

Form I-102. For filing application (Form I-102) for Arrival-Departure Record (Form I-94) or Crewman's Landing Permit (Form I-95), in lieu of one lost, mutilated, or destroyed—$15.00

Form I-129B. For filing petition to classify nonimmigrant as temporary worker or trainee under section 214(c) of the Act—$35.00

Form I-129F. For filing petition to classify nonimmigrant as fiancee or fiance under section 214(d) of the Act—$35.00

Form I-130. For filing petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act—$35.00

Form I-131. For filing application for issuance of reentry permit—$15.00

Form I-140. For filing petition to classify preference status of an alien on basis of profession or occupation under section 204(a) of the Act—$50.00

Form I-191. For filing application for discretionary relief under section 212(c) of the Act—$50.00

Form I-192. For filing application for discretionary relief under section 212(d)(3) of the Act, except, in an emergency case, or where the approval of the application is in the interest of the United States Government—$35.00

Form I-193. For filing application for waiver of passport and/or visa—$15.00

Form I-212. For filing application for permission to reapply for an excluded or deported alien, an alien who has fallen into distress and has been removed as an alien enemy, or an alien who has been removed at Government expense in lieu of deportation—$35.00

Form I-246. For filing application for stay of deportation under Part 243 of this chapter—$70.00

Form I-256A. For filing application for suspension of deportation under section 244 of the Act—$75.00

Form I-290A. For filing appeal from any decision under the immigration laws in any type of proceedings (except a bond decision) over which the Board of Immigration Appeals has appellate jurisdiction in accordance with section 3.1(b) of this Chapter. (The fee of $50 will be charged whenever an appeal is filed by or on behalf of two or more aliens and the aliens are covered by one decision)—$50.00

Form I-290B. For filing an appeal from any decision under the immigration laws in any type of proceeding over which the Board of Immigration Appeals does not have appellate jurisdiction. (The fee of $50 will be charged whenever an appeal is filed by or on behalf of two or more aliens and the aliens are covered by one decision)—$50.00

Form I-485. For filing application on Form I-485 for permanent residence status or for creation of a record of lawful permanent residence—$50.00

Form I-506. For filing application for change of nonimmigrant classification under section 248 of the Act—$15.00

Form I-538. For filing application by a nonimmigrant student (F-1) for an extension of stay, a school transfer or permission to accept or continue employment or practical training—$15.00

Form I-539. For filing application for extension of stay of a nonimmigrant, other than one described in section

101(a)(15)(F) or 101(a)(15)(J) of the Act, and, upon a basis of reciprocity, a nonimmigrant described in section 101(a)(15)(A)(iii) or 101(a)(15)(G)(v) of the Act—$15.00

Form I-570. For filing application for issuance or extension of refugee travel document—$15.00

Form I-600. For filing petition to classify orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required—$50.00

Form I-600A. For filing application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required)—$50.00

Form I-601. For filing application for waiver of ground of excludability under section 212(h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those subsections—$35.00

Form I-612. For filing application for waiver of the foreign-residence requirement under section 212(e) of the Act—$50.00

Form N-400. For filing application for certificate of citizenship on Form N-400 by a parent, and the issuance thereof, under section 341 of the Act—$35.00

Form N-410. For filing motion for amendment of petition for naturalization when motion is for the convenience of the petitioner—$15.00

Form N-455. For filing application for transfer of petition for naturalization under section 335(i) of the Act, except when transfer is of a petition for naturalization filed under the Act of October 24, 1968, P.L. 90-633—$15.00

Form N-470. For filing application for section 316(b) or 317 of the Act benefits—$15.00

Form N-565. For filing application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; or for a certificate of citizenship in a changed name under section 343(b) or (d) of the Act—$15.00

Form N-577. For filing application for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(c) of the Act—$15.00

Form N-580. For filing application for a certificate of naturalization or repatriation under section 343(a) of the Immigration and Nationality Act or the 12th subdivision of section 4 of the Act of June 29, 1906—$15.00

Form N-600. For filing application for certificate of citizenship under section 309(c) or section 341 of the Act—$35.00

Motion. For filing a motion to reopen or reconsider any decision under the immigration laws (except on applications filed by exchange visitors on Form IAP-66, Cuban refugees on Form I-485A filed under the Act of November 2, 1966, or A-1, A-2 or G-4 nonimmigrants on Form I-566 for which no fee is chargeable). When the motion to reopen or reconsider is made concurrently with any application under the immigration laws, the application will be considered an integral part of the motion and only the fee for filing the motion or the fee for filing the application, whichever is greater, is payable. (The fee of $50 will be charged whenever a motion is filed by or on behalf of two or more aliens and the aliens are covered by one decision)—$50.00

Request. For filing application for temporary withholding of deportation under section 243(h) of the Act—$50.00

Request. For special statistical tabulations a charge will be made to cover the cost of the work involved—Cost

Request. For set of monthly, semiannual, or annual tables entitled "Passenger Travel Reports via Sea and Air"[1]—$7.00

(2) Fees for production or disclosure of records under 5 U.S.C. 552 shall be charged in accordance with the regulations of the Department of Justice, 28 CFR 16.9.

(3) Except as otherwise provided in paragraph (c) of this section, for services performed under section 344(a) of the Act the clerk of the court shall charge, collect, and account for the following fees:

Form N-300/315. For receiving and filing a declaration intention—$15.00

Form N-405/407. For making, filing, and docketing a petition for naturalization—$50.00

(c) *Waiver of fees.* (1) Except as otherwise provided in this paragraph and in § 3.3(b) of this chapter, any of the fees prescribed in paragraph (b) of this section relating to applications, petitions, appeals, motions, or requests may be waived in any case in which the alien or other party affected is unable to pay the prescribed fee if he files his affidavit asking for permission to prosecute without payment of fee the application, petition, appeal, motion, or request, and stating his belief that he is entitled to or deserving of the benefit requested and the reasons for his inability to pay. The officer of the Service having jurisdiction to render a decision on the application, petition, appeal, motion, or request may, in his discretion, grant the waiver of fee. Fees for "Passenger Travel Reports via Sea and Air" and for special statistical tabulations may not be waived.

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[1] Available from Immigration & Naturalization Service for years 1975 and before. Later editions are available from the United States Department of Transportation, contact: United States Department of Transportation, Transportation Systems Center, Kendall Sqaure, Cambridge, MA. 02142.

(2) Fees under the Freedom of Information Act, as amended, may be waived or reduced where the Service determines such action would be in the public interest because furnishing the information can be considered as primarily benefiting the general public.

(3) When the prescribed fee is for services to be performed by the clerk of court under section 344(a) of the Act, the affidavit for waiver of the fee shall be filed with the district director or officer in charge of the Service having administrative jurisdiction over the place in which the court is located at least 7 days prior to the date the fee is required to be paid. If the waiver is granted, there shall be delivered to the clerk of court by a Service representative on or before the date the fee is required to be paid, a notice prepared on Service letterhead and signed by the officer granting the waiver, that the fee has been waived pursuant to this paragraph.

(d) *Authority to certify records.* Whenever authorized under 5 U.S.C. 552 or any other law to furnish information from records to persons entitled thereto, the following officials, or their designees authorized in writing as specified below, have authority to make certification, as follows:

(1) The Associate Commissioner, Information Systems, the Assistant Commissioner, Records Systems Division, or the designee of either, authorized in writing to make certification in his absence—copies of files, documents, and records in the custody of the Central Office.

(2) A regional commissioner, or district director, or the designee of either, authorized in writing to make certification in his absence—copies of files, documents, and records in the custody of his office.

(3) The Supervisory Border Patrol Agent, El Paso Intelligence Center, or his designee, authorized in writing to make certification in his absence—copies of files, documents, and records of the Immigration and Naturalization Service in the custody of his office.

(4) The Assistant Commissioner, Records Systems Division, or the Director, Records Management Branch, Central Office, of the designee of either, authorized in writing to make certification in his absence—the nonexistence of an official Service record.

(Sec. 103; 8 U.S.C. 1103, and 31 U.S.C. 483a and OMB Circular No. A-25; sec. 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103); 5 U.S.C. 552a; 28 CFR, and EO 12356)

[38 FR 35296, Dec. 27, 1973, as amended at 40 FR 7236, 7238, Feb. 19, 1975; 41 FR 1887, Jan. 13, 1976; 41 FR 34937, Aug. 18, 1976; 43 FR 5356, Feb. 8, 1978; 43 FR 16150, Apr. 17, 1978; 44 FR 52169, Sept. 7, 1979; 48 FR 14573, Apr. 5, 1983; 48 FR 19152, Apr. 28, 1983; 48 FR 49652, Oct. 27, 1983; 48 FR 51430, Nov. 9, 1983]

§ 103.8 Definitions pertaining to availability of information under the Freedom of Information Act.

Sections 103.8, 103.9, and 103.10 of this part comprise the Service regulations under the Freedom of Information Act, 5 U.S.C. 552. These regulations supplement those of the Department of Justice, 28 CFR Part 16, Subpart A. As used in this part the following definitions shall apply:

(a) The term "decision" means a final written determination in a proceeding under the Act accompanied by a statement of reasons. Orders made by check marks, stamps, or brief endorsements which are not supported by a reasoned explanation, or those incorporating preprinted language on Service forms are not "decisions".

(b) The term "records" includes records of proceedings, documents, reports, and other papers maintained by the Service.

(c) The term "record of proceeding" is the official history of any hearing, examination, or proceeding before the Service, and in addition to the application, petition, order to show cause, or other initiating document, includes the transcript of hearing or interview, exhibits, and any other evidence relied upon in the adjudication; papers filed in connection with the proceeding, including motions and briefs; the Service officer's determination; notice of appeal or certification; the Board or other appellate determination; motions to reconsider or reopen; and documents submitted in support of appeals, certifications, or motions.

[32 FR 9623, July 4, 1967, as amended at 40 FR 7236, Feb. 19, 1975]

§ 103.9 Availability of decisions and interpretive material under the Freedom of Information Act.

(a) *Precedent decisions.* There may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, bound volumes of designated precedent decisions entitled "Administrative Decisions Under Immigration and Nationality Laws of the United States," each containing a cumulative index. Prior to publication in volume from current precedent decisions, known as interim decisions, are obtainable from the Superintendent of Documents on a single copy or yearly subscription basis. Bound volumes and current precedent decisions may be read at principal Service offices.

(b) *Unpublished decisions.* Each district director in the United States will maintain copies of unpublished Service and Board decisions relating to proceedings in which the initial decision was made in his district. Each regional commissioner will maintain copies of unpublished decisions made by him. The Central Office will maintain copies on a national basis of unpublished Service decisions.

(c) *Deletion of identifying details.* To the extent that information in decisions is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552), the deciding officer shall provide for deletion of identifying details, as appropriate, from copies of decisions made available to the public.

(d) *Statements of policy, interpretations, manuals, instructions to staff.* Statements of policy, interpretations, and those manuals and instructions to staff (or portions thereof), affecting the public, will be made available at district offices in the United States and at the Central Office with an accompanying index of any material which is issued on or after July 4, 1967.

(e) *Public reading rooms.* The Central Office and each district office in the United States will provide a reading room or reading area where the material described in this section will be made available to the public. Additional material will be made available in the public reading rooms, including the immigration and nationality laws, title 8 of the United States Code Annotated, Title 8 of the Code of Federal Regulations—Chapter I, a complete set of the forms listed in Parts 299 and 499 of this chapter, and the Department of State Foreign Affairs Manual, Volume 9—Visas. Fees will not be charged for providing access to any of these materials, but fees in accordance with § 103.7(b) will be charged for furnishing copies.

(Sec. 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103); 5 U.S.C. 552a; 28 CFR, and EO 12356)

[32 FR 9623, July 4, 1967, as amended at 36 FR 20151, Oct. 16, 1971; 40 FR 7237, Feb. 19, 1975; 48 FR 49652, Oct. 27, 1983]

§ 103.10 Requests for records under the Freedom of Information Act.

(a) *Place and manner of requesting records*—(1) *Place.* Records shall be made available in the Central Office, each regional office, any district office, and the following offices: Agana, Guam; Albany, N.Y.; Charlotte, N.C.; Cincinnati, Ohio; Hammond, Ind.; Las Vegas, Nev.; Memphis, Tenn.; Milwaukee, Wis.; Norfolk, Va.; Pittsburgh, Pa.; Providence, R.I.; Reno, Nev.; St. Louis, Mo.; Salt Lake City, Utah; Spokane, Wash.; additionally, in particular cases, a district director may designate any other Service office. Active alien records are maintained in the district or suboffice listed above where the subject of the record resides. For locations of regional and district offices, see 8 CFR 100.4.

(2) *Manner of requesting records.* All Freedom of Information Act requests must be in writing. Requests may be submitted in person or by mail. If a request is made by mail, both the envelope and its contents must be clearly marked: "FREEDOM OF INFORMATION REQUEST" or "INFORMATION REQUEST." Any request for information not marked and addressed as specified will be so marked by Service personnel as soon as it is properly identified and shall be forwarded immediately to the appropriate office designated to control Freedom of Information Act requests. A request will not be deemed to have been received for purposes of the time period under 5 U.S.C. 552(a)(6) until the request has been received by the appropriate office, or would have been received with the exercise of due diligence by Service personnel. Service Form G-639, Freedom of Information/Privacy Act Request, may be used for rapid identification as a Freedom of Information matter and to ensure expeditious handling; however, a request may be submitted in any written form. Each request made under this section pertaining to the availability of a record must describe the record with sufficient specificity with respect to names, dates, subject matter and location to permit it to be identified and located. A request for all records falling within a reasonably specific category shall be regarded as reasonably described if the description enables the records to be identified by any process not unreasonably burdensome. If it is determined that the request does not reasonably describe the records sought, the response rejecting the request on that ground shall specify the reason why the request failed to meet requirements and shall extend to the requester an opportunity to confer with Service personnel to reformulate the request.

(b) *Authority to grant and deny requests*—(1) *Grants.* The Associate Commissioner, Information Systems, regional commissioners, district directors, and their designees may grant any type of request not prohibited by law or Executive Order. The head of any office specified in paragraph (a)(1) of this section may grant the following types of requests:

(i) Requests for information and records which officers and employees of the Service prior to the enactment of 5 U.S.C. 552 customarily furnished to the public in the regular performance of their duties;

(ii) Requests for records of proceedings in deportation hearings, unless members of the public have been excluded from the hearings by direction of the special inquiry officer pursuant to § 242.16(a) of this chapter;

(iii) Requests for records of proceedings in naturalization examinations and hearings;

(iv) Requests for records of proceedings in any other proceedings before the Service which were open to the public;

(v) Requests for records of proceedings in administrative fine cases; and

(vi) Requests for any other records of the Service, including portions of records, which clearly are not within the exemptions from disclosure enumerated in 5 U.S.C. 552(b).

(2) *Denials.* The Associate Commissioner, Information Systems, regional commissioners, district directors, and their designees are authorized to deny a request under exemptions provided in 5 U.S.C. 552(b).

(3) *Authority to state that a record cannot be located or does not exist.* The head of any office specified in paragraph (a) (1) of this section has authority to notify a requester that a record cannot be located from the information supplied, or is known to have been destroyed or otherwise disposed of.

(c) *Prompt response*—(1) *Response within 10 days.* Within 10 days (excluding Saturdays, Sundays, and legal holidays) of the receipt of a request by the Service (or in the case of an improperly addressed request, of its receipt by the appropriate office as specified in paragraph (a) of this section), the authorized Service official shall either comply with or deny the request unless an extension of time is requested as required under 28 CFR 16.5(c). A request improperly addressed will not be deemed to have been received for purposes of 5 U.S.C 552 (a)(6) until it has been or would have been received by the appropriate office with the exercise of due diligence by Service personnel.

(2) *Treatment of delay as a denial.* If no substantive reply is forthcoming at the end of the 10-day period, or the last extension thereof under 28 CFR 16.5(c), the requester may deem his request denied, and exercise a right of appeal in accordance with 28 CFR 16.7. When no substantive reply can be made within the applicable time limit, the responsible Service office shall nevertheless continue to process the request; it shall inform the requester upon expiration of the time limit of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and appeal to the Attorney General in accordance with 28 CFR 16.7; and it may ask the requester to forego appeal until a determination is made.

(d) *Disposition of requests*—(1) *Form of grant.* When a requested record is available, the responsible office shall notify the requester when and where the record is available or copies will be available. The notification shall also advise the requester of any applicable fees under 28 CFR 16.9.

(2) *Form of denial.* A reply denying a written request for a record in whole or in part shall be in writing, signed by the Associate Commissioner, Information Systems, by a regional commissioner, by a district director, or by one of their designees. The reply shall include a reference to the specific exemption under the Freedom of Information Act authorizing withholding of the records. The notice of denial shall contain a brief explanation of how the exemption applies to the record withheld and, if the deciding official considers it appropriate, a statement of why the exempt record is being withheld. The notice of denial shall include a statement of the right of appeal to the Attorney General under 28 CFR 16.7, and that judicial review will thereafter be available in the district in which the requester resides or has a principle place of business, or the district in which the agency records are situated, or the District of Columbia.

(3) *Right of appeal.* When a request for records has been denied in whole or in part, the requester may, within 30 days of its receipt, appeal the denial to the Assistant Attorney General, Office of Legal Policy, (Attention: Office of Information and Privacy), Department of Justice, Washington, D.C. 20530. Both the envelope and letter must be clearly marked: "FREEDOM OF INFORMATION APPEAL" or "INFORMATION APPEAL."

(e) *Copies of responses to Deputy Attorney General.* A copy of each notification to a requester of a delay, notice of extension, denial or of inability to locate a requested record shall be furnished to the Deputy Attorney General.

(f) *Verification of information from Service records.* When a requester desires, not a copy of a record, but a formal statement by the Service verifying particular information based on Service records, his request is not being made pursuant to the Freedom of Information Act and shall be submitted on Form G-641 to the Service office having jurisdiction over his place of residence.

(Sec. 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103); 5 U.S.C. 552a; 28 CFR, and EO 12356)

[40 FR 7237, Feb. 19, 1975, as amended at 41 FR 34938, Aug. 18, 1976; 42 FR 15408, March 22, 1977; 43 FR 22332, May 25, 1978; 44 FR 23514, Apr. 20, 1979; 48 FR 49652, Oct. 27, 1983; 48 FR 51430, Nov. 9, 1983]

§ 103.20 Purpose and scope.

(a) Sections 103.20 through 103.36 comprise the regulations of the Service implementing the Privacy Act of 1974, Pub. L. 93-597. The regulations apply to all records contained in systems of records maintained by the Service which are identifiable by individual name or identifier and which are retrieved by individual name or identifier, except those personnel records governed by Civil Service Commission regulations. The regulations set forth the procedures by which individuals may seek access to records pertaining to themselves and request correction of those records. The regulations also set forth the requirements applicable to Service employees maintaining, collecting, using or disseminating such records.

(b) The Associate Commissioner, Information Systems, shall ensure that the provisions of §§ 103.20 through 103.36 of this title and 28 CFR 16.40 through 16.56, and any revisions, are brought to the attention of and made available to:

(1) Each employee at the time of issuance of the regulations and at the time of any amendments; and

(2) Each new employee at the time of employment.

(c) The Associate Commissioner, Information Systems, shall be responsible for ensuring that employees of the Service are trained in the obligations imposed by the Privacy Act of 1974 (5 U.S.C 522a) and by these regulations.

(Sec. 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103); 5 U.S.C. 552a; 28 CFR, and EO 12356)

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49652, Oct. 27, 1983]

§ 103.21 Access by individuals to records maintained about them.

(a) *Access to available records.* Any individual who seeks access to records about himself in a system of records, which have not been exempted from access under the Privacy Act of 1974 (5 U.S.C. 552a), must submit a written request in person or by mail to the manager of the particular system of records to which access is sought. Systems managers are identified in the "Notice of Systems of Records" published by the National Archives and Records Service, General Services Administration. A request for access to records in multiple systems of records may be addressed to the Office of the Associate Commissioner, Information Systems which shall assist the requester in identifying the request more precisely and shall be responsible for forwarding the request to the appropriate systems managers. Use of Form G-639, Freedom of Information/Privacy Act Request, is recommended for rapid identification and to ensure expeditious handling of the request.

(b) *Verification of identity.* The following standards are applicable to any individual who requests records concerning himself, unless other provisions for identity verification are specified in the published notice pertaining to the particular system of records.

(1) An individual seeking access to records about himself in person shall establish his identity by the presentation of a single document bearing a photograph (such as a passport, alien registration receipt card or identification badge) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and address (such as a driver's license, or credit card).

(2) An individual seeking access to records about himself by mail shall establish his identity by a signature, address, date of birth, place of birth, alien or employee identification number, if any, and one other identifier such as a photocopy of an identifying document.

(3) An individual seeking access to records about himself by mail or in person who cannot provide the necessary documentation of identification may provide a notarized statement swearing or affirming to his identity and to the fact that he understands the penalties for false statements pursuant to 18 U.S.C. 1001. Form G-652, affidavit of Identity, may be obtained on request from the office of the system manager of a system of records at a system location listed in the "Notice of Systems of Records" published in the FEDERAL REGISTER.

(c) *Verification of guardianship.* The parent or guardian of a child or of a person judicially determined to be incompetent and seeking to act on behalf of such child or incompetent, shall, in addition to establishing his own identity, establish the identity of the child or other person he represents as required in paragraph (b) of this section, and establish his own parentage or guardianship of the subject of the record by furnishing either a copy of a birth certificate showing parentage or a court order establishing the guardianship.

(d) *Accompanying persons.* An individual seeking to review records pertaining to himself may be accompanied by another individual of his own choosing. Both the individual seeking access and the individual accompanying him shall be required to sign the required form indicating that the Service is authorized to discuss the contents of the subject record in the presence of both individuals.

(e) *Specification of records sought.* Requests for access to records, either in person or by mail, shall describe the nature of the records sought, the approximate dates covered by the record, the system in which it is thought to be included as described in the "Notice of Systems of Records" published in the FEDERAL REGISTER, and the identity of the individual or office of the Service having custody of the system of records. In addition, the published "Notice of Systems of Records" for individual systems may include further requirements of specification, where necessary, to retrieve the individual record from the system.

(Sec. 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103); 5 U.S.C. 552a; 28 CFR, and EO 12356)

[40 FR 44481, Sept. 26, 1975; 40 FR 46092, Oct. 6, 1975, as amended at 42 FR 33025, June 29, 1977; 48 FR 49653, Oct. 27, 1983]

§ 103.22 Records exempt in whole or in part.

(a) When an individual requests records about himself which have been exempted from individual access pursuant to 5 U.S.C. 552a(j) or (k)(3) or (k)(4) or which have been compiled in reasonable anticipation of a civil action or proceeding either in a court or before an administrative tribunal, the Service will neither confirm nor deny the existence of the record but shall advise the individual only that there is no record which is available to him pursuant to the Privacy Act of 1974.

(b) Individual requests for access to records which have been exempted from access pursuant to 5 U.S.C. 552a(k) shall be processed as follows:

(1) A request for information classified by the Service under *Executive Order 12356 on National Security Information* requires the Service to review the information to determine whether it continues to warrant classification under the criteria of the Executive Order. Information which no longer warrants classification shall be declassified and made available to the individual, if not otherwise exempt. If the information continues to warrant classification, the individual shall be advised that the information sought is classified; that it has been reviewed and continues to warrant classification; and that it has been exempted from access under 5 U.S.C. 552a(k)(1). Information which has been exempted under 5 U.S.C. 552a(j) and which is also classified, shall be reviewed as required by this paragraph but the response to the individual shall be in the form prescribed by paragraph (a) of this section.

(2) Requests for information which has been exempted from disclosure pursuant to 5 U.S.C. 552a(k)(2) shall be responded to in the manner provided in paragraph (a) of this section unless a review of the information indicates that the information has been used or is being used to deny the individual any right, privilege or benefit for which he is eligible or to which he would otherwise be entitled under Federal law. In that event, the individual shall be advised of the existence of the record and shall be provided the information except to the extent it would identify a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletions made or the summary shall be furnished to the requester.

(3) Information compiled as part of an employee background investigation which has been exempted pursuant to 5 U.S.C. 552a(k)(5) shall be made available to an individual upon request except to the extent that it identifies a confidential source. If and only if information identifying a confidential source can be deleted or the pertinent parts of the record summarized in a manner which protects the identity of the confidential source, the document with deletions made or the summary shall be furnished to the requester.

(4) Testing or examination material which has been exempted pursuant to 5 U.S.C. 552a(k)(6) shall not be made available to an individual if disclosure would compromise the objectivity or fairness of the testing or examination

process but shall be made available if no such compromise possibility exists.

(5) The Service records which are exempted and the reasons for the exemptions are enumerated in 28 CFR 16.99.

(Sec. 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103); 5 U.S.C. 552a; 28 CFR, and EO 12356)

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49653, Oct. 27, 1983]

§ 103.23 Special access procedures.

(a) *Records of other agencies.* When information sought from a system of records of the Service includes information:

(1) That has been classified under Executive Order 12356, the request shall be referred to the appropriate classifying authority under 28 CFR 17.61 and the individual requesting the record shall be so advised unless the record is also exempt from disclosure under 5 U.S.C. 552a(j) or (k);

(2) That has been furnished by another component of the Department of Justice, the request shall be referred to the component originating the information for a decision as to access or correction;

(3) That has been furnished by another agency, the Service shall consult the other agency before granting access or making a correction and may refer the request to the other agency if referral will provide more expeditious access or correction, but the requester shall be notified of the referral.

(b) *Medical records.* When an individual requests medical records concerning himself, which are not otherwise exempt from disclosure, the system manager shall, if deemed necessary, advise the individual that records will be provided only to a physician designated in writing by the individual. Upon receipt of the designation, the system manager will permit the physician to review the records or to receive copies of the records by mail, upon proper verification of identity. The determination of which records should be made available directly to the individual and which records should not be disclosed because of possible harm to the individual shall be made by the physician.

(Sec. 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103); 5 U.S.C. 552a; 28 CFR, and EO 12356)

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49653, Oct. 27, 1983]

§ 103.24 Requests for accounting of record disclosure.

At the time of his request for access or correction or at any other time, an individual may request an accounting of disclosures made of his record outside the Department of Justice. Requests for accounting shall be directed to the appropriate system manager listed in the "Notice of Systems of Records". Any available accounting, whether kept in accordance with the requirements of the Privacy Act or under procedures established prior to September 27, 1975, shall be made available to the individual except that an accounting need not be made available if it relates to: (a) A disclosure with respect to which no accounting need be kept (see § 103.30(c) of this part); (b) A disclosure made to a law enforcement agency pursuant to 5 U.S.C. 552a(b)(7); (c) An accounting which has been exempted from disclosure pursuant to 5 U.S.C. 552a (j) or (k).

§ 103.25 Notice of access decisions; time limits.

(a) *Responsibility for notice.* The system manager of the system from which information is sought or his delegate has responsibility for determining whether access to records is available under the Privacy Act and for notifying the individual of that determination in accordance with these regulations. If access is denied because of an exemption, the responsible person shall notify the individual that he may appeal that determination to the Deputy Attorney General within thirty working days of the receipt of the determination.

(b) *Time limits for access determinations.* The time limits provided by 28 CFR 16.45 shall be applicable to requests for access to information pursuant to the Privacy Act of 1974.

§ 103.26 Fees for copies of records.

The fees charged by the Service under the Privacy Act shall be those

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specified in 28 CFR 16.46. Remittances shall be made in accordance with § 103.7(a) of this part.

§ 103.27 Appeals from denials of access.

An individual who has been denied access by the Service to the records concerning him may appeal that decision in the manner prescribed in 28 CFR 16.47.

§ 103.28 Requests for correction of records.

(a) *How made.* Unless a record is exempted from corrections, a request for amendments or corrections is made by the individual concerned, either in person or by mail, by addressing the written request to the manager of the system in which the record is maintained. The requester's identity must be established as provided in § 103.21. The request must indicate the particular record involved, the nature of the correction sought, and the justification. A request made by mail should be addressed to the system manager at the address specified in the "Notice of Systems of Records" published by the General Services Administration and the request and envelope must be clearly marked "Privacy Correction Request." Where the requester cannot determine the precise system manager or believes that the same record appears in more than one system, the request may be addressed to the Office of the Associate Commissioner, Information Systems, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. This office shall assist the requester in identifying the location of the record.

(b) *Initial determination.* Within 10 working days of the receipt of the request, the appropriate Service official shall advise the requester that the request has been received. If the record is to be amended or corrected, the system manager may so advise the requester but if correction is refused, in whole or in part, the referral must be by the head of the component in which the record is located, or his designee. If a correction is to be made, the requester shall be advised of the right to obtain a copy of the corrected record upon payment of the standard fee, established in 28 CFR 16.46. If a correction or amendment is refused, in whole or in part, the requester shall be given the reasons and advised of the right to appeal to the Assistant Attorney General under 28 CFR 16.48.

(c) *Appeals.* A refusal, in whole or in part, to amend or correct a record may be appealed as provided in 28 CFR 16.48.

(d) *Appeal determinations.* 28 CFR 16.48 provides for appeal determinations.

(e) *Statements of disagreement.* Statements of disagreement may be furnished by the individual in the manner prescribed in 28 CFR 16.48.

(f) *Notices of correction or disagreement.* When a record has been corrected, the system manager shall, within thirty working days thereof, advise all prior recipients of the record whose identity can be determined pursuant to the accounting required by the Privacy Act or any other accounting previously made, of the correction. Any dissemination of a record after the filing of a statement of disagreement shall be accompanied by a copy of that statement. Any statement of the Service giving reasons for refusing to correct shall be included in the file

(Sec. 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103); 5 U.S.C. 552a; 28 CFR, and EO 12356)

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49653, Oct. 27, 1983; 48 FR 51431, Nov. 9, 1983]

§ 103.29 Records not subject to correction.

The following records are not subject to correction or amendment by individuals:

(a) Transcripts or written statements made under oath;

(b) Transcripts of Grand Jury Proceedings, judicial or quasi-judicial proceedings which form the official record of those proceedings;

(c) Pre-sentence reports comprising the property of the courts but maintained in Service files; and

(d) Records duly exempted from correction by notice published in the FEDERAL REGISTER.

§ 103.30 Accounting for disclosures.

(a) An accounting of each disclosure of information for which accounting is required (see § 103.24 of this part) shall be attached to the relating record. A copy of Form G-658, Record of Information Disclosure (Privacy Act), or other disclosure document shall be used for this accounting. The system manager shall advise the requester, promptly upon request as described in § 103.24, of the persons or agencies outside the Department of Justice to which records concerning the requester have been disclosed.

(b) Accounting records, at a minimum, shall include the identification of the particular record disclosed, the name and address of the person or agency to which disclosed, and the date of the disclosure. Accounting records shall be maintained for at least 5 years, or until the record is destroyed or transferred to the Archives, whichever is later.

(c) Accounting is not required to be kept for disclosures made within the Department of Justice or disclosures made pursuant to the Freedom of Information Act.

(Sec. 103 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103); 5 U.S.C. 552a; 28 CFR, and EO 12356)

[40 FR 44481, Sept. 26, 1975, as amended at 48 FR 49653, Oct. 27, 1983]

§ 103.31 Notices of subpoenas and emergency disclosures.

(a) *Subpoenas.* When records concerning an individual are subpoenaed by a Grand Jury, court, or a quasijudicial agency, the official served with the subpoena shall be responsible for assuring that notice of its issuance is provided to the individual. Notice shall be provided within 10 days of the service of the subpoena or, in the case of a Grand Jury subpoena, within 10 days of its becoming a matter of public record. Notice shall be mailed to the last known address of the individual and shall contain the following information: The date the subpoena is returnable, the court in which it is returnable, the name and number of the case or proceeding, and the nature of the information sought. Notice of the issuance of subpoenas is not required if the system of records has been exempted from the notice requirement pursuant to 5 U.S.C. 552a(j), by a Notice of Exemption published in the FEDERAL REGISTER.

(b) *Emergency disclosures.* If information concerning an individual has been disclosed to any person under compelling circumstances affecting health or safety, the individual shall be notified at his last known address within 10 working days of the disclosure. Notification shall include the following information: the nature of the information disclosed, the person or agency to whom it was disclosed, the date of the disclosure, and the compelling circumstances justifying the disclosure. Notification shall be given by the officer who made or authorized the disclosure.

§ 103.32 Information forms.

(a) *Review of forms.* The Service shall be responsible for the review of forms it uses to collect information from and about individuals.

(b) *Scope of review.* The Service Forms Control Unit shall review each form to assure that it complies with the requirements of 28 CFR 16.52.

§ 103.33 Contracting record systems.

Any contract by the Service for the operation of a record system shall be in compliance with 28 CFR 16.53.

§ 103.34 Security of records systems.

The security of records systems shall be in accordance with 28 CFR 16.54.

§ 103.35 Use and collection of Social Security numbers.

The use and collection of Social Security numbers shall be in accordance with 28 CFR 16.55.

§ 103.36 Employee standards of conduct with regard to privacy.

Service employee standards of conduct with regard to privacy shall be in compliance with 28 CFR 16.56.

PART 109—EMPLOYMENT AUTHORIZATION

Sec.

109.1 Classes of aliens eligible.
109.2 Revocation of employment authorization.

Authority: Sec. 103, 245(c); 8 U.S.C. 1103, 1255(c).

§ 109.1 Classes of aliens eligible.

(a) *Aliens authorized employment incident to status.* The employment authorization is limited solely to the extent and conditions described for the corresponding classifications in section 101(a)(15) of the Act, 8 CFR Part 214, 22 CFR Part 41, and 22 CFR 514.24. The following classes of aliens are authorized to be employed in the United States as a condition of their admission or subsequent change to one of the indicated classes, and specific authorization need not be requested:

(1) A lawful permanent resident alien.

(2) An alien admitted to the United States as a refugee under section 207 of the Act for the period of time in that status.

(3) An alien paroled into the United States as a refugee for the period of time in that status.

(4) An alien granted asylum under section 208 of the Act for the period of time in that status.

(5) An alien admitted to the United States as a nonimmigrant fiance or fiancee for the period of admission to the United States.

(6) An alien admitted in one of the following classifications, or whose status has been changed to such classification under section 247 or 248 of the Act:

(i) A foreign government official (A-1), or (A-2).

(ii) An employee of a foreign government official (A-3).

(iii) A nonimmigrant visitor for business (B-1).

(iv) A nonimmigrant crewman (D-1).

(v) A nonimmigrant treaty trader or investor (E-1), or (E-2).

(vi) A representative of an international organization (G-1), (G-2), (G-3), or (G-4).

(vii) A personal servant of an employee or representative of an international organization (G-5).

(viii) A temporary worker or trainee (H-1), (H-2), or (H-3).

(ix) An information media representative (I).

(x) An exchange visitor (J-1).

(xi) An intra-company transferee (L-1).

(b) *Aliens who must apply for work authorization.* Any alien within a class of aliens described in this section must apply for work authorization to the district director in whose district the alien resides:

(1) Any alien maintaining a lawful nonimmigrant status in one of the following classes may be granted permission to be employed:

(i) Alien spouse or unmarried dependent son or daughter of a foreign government official (A-1) or (A-2) as provided in § 214.2(a)(2) of this title, or the dependent of an employee as provided by § 214.2(a)(3) of this title.

(ii) Alien nonimmigrant student (F-1) as provided in § 214.2(f) of this chapter.

(iii) Alien spouse or an unmarried dependent son or daughter of an officer or employee of an international organization (G-4) as provided in § 214.2(g) of this chapter.

(iv) Alien spouse or minor child of an exchange visitor (J-2) as provided in § 214.2(j) of this title.

(2) Any alien who has filed a nonfrivolous application for asylum pursuant to Part 208 of this chapter may be granted permission to be employed for the period of time necessary to decide the case.

(3) Any alien who has properly filed an application for adjustment of status to permanent resident alien may be granted permission to be employed for the period of time necessary to decide the case.

(4) Any alien paroled into the United States temporarily for emergent reasons or for reasons deemed strictly in the public interest: *Provided,* The alien establishes an economic need to work.

(5) Any alien who has applied to an immigration judge under § 242.17 of this chapter for suspension of deportation pursuant to section 244(a) of the Act may be granted permission to be employed for the period of time necessary to decide the case: *Provided,* The alien establishes an economic need to work.

(6) Any deportable alien granted voluntary departure, either prior to hearing or after hearing, for reasons set

forth in § 242.5(a)(2) (v), (vi), or (vii) of this chapter may be granted permission to be employed for that period of time prior to the date set for voluntary departure including any extension granted beyond such date. Factors which may be considered in granting employment authorization to an alien who has been granted voluntary departure:

(i) Length of voluntary departure granted;

(ii) Dependent spouse and/or children in the United States who rely on the alien for support;

(iii) Reasonable chance that legal status may ensue in the near future; and

(iv) Reasonable basis for consideration of discretionary relief.

(7) Any alien in whose case the district director recommends consideration of deferred action, an act of administrative convenience to the government which gives some cases lower priority: *Provided*, The alien establishes to the satisfaction of the district director that he/she is financially unable to maintain himself/herself and family without employment.

(8) Any excludable or deportable alien who has posted an appearance and delivery bond may be granted temporary employment authorization if the District Director determines that employment is appropriate under § 103.6(a)(2)(iii) of this chapter.

(c) *Basic criteria to establish economic necessity.* Title 45—Public Welfare, Poverty Income Guidelines, 45 CFR 1060.2 shall be used as the basic criteria to establish economic necessity for employment authorization requests where the alien's need to work is a factor. The applicant shall submit a signed statement listing his/her assets, income, and expenses as evidence of his/her economic need to work. Permission to work granted on the basis of the applicant's statement may be revoked under § 109.2 upon a showing that the information contained in the statement was not true and correct.

[46 FR 55921, Nov. 13, 1981, as amended at 48 FR 29465, June 27, 1983; 48 FR 40209, Sept. 6, 1983; 48 FR 41755, Sept. 19, 1983; 48 FR 51144, Nov. 7, 1983]

§ 109.2 Revocation of employment authorization.

(a) *Basis for revocation of employment authorization.* Employment authorization granted under § 109.1(b) of this part may be revoked by the district director when it appears that one or more of the conditions upon which it was granted no longer exist, or for good cause shown.

(b) *Notice of intent to revoke employment authorization.* When a district director determines that employment authorization should be revoked, he/she shall serve notice of the reasons and the intention to revoke on the alien. The alien will be granted a period of fifteen days from the date of service of notice in which to submit evidence why the authorization should not be revoked. The decision by the district director shall be final and no appeal shall lie from the decision to revoke the authorization.

[46 FR 25080, May 5, 1981]

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

Sec.

204.1 Petition.
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AUTHORITY: Secs. 101, 103, 201, 203, 204, 212, 245, 66 Stat. 166, 173, 175, 178, 179, 182, 217; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1255, unless otherwise noted.

§ 204.1 Petition.

(a) *Relative*—(1) *Filing petition.* A petition to accord preference classification under section 203(a) (1), (2), (4), or (5) of the Act or classification as an immediate relative under section 201(b) of the Act, other than for a child as defined in section 101(b)(1)(F) of the Act or a Pub. L. 97-359 Amerasian, must be filed on a separate Form I-130 for each beneficiary and must be accompanied by the fee required under § 103.7(b) of this chapter.

(2) *Jurisdiction*—(i) *Petitioner residing in the United States.* The petition must be filed in the office of the Service having jurisdiction over the place where the petitioner is residing in the United States, except that when accompanied by an application for adjustment of status, a petition may be filed and a decision made in the Service office having jurisdiction over the place where the beneficiary is residing.

(ii) *Petitioner residing abroad.* Except as provided in paragraph (a)(2)(iii) of this section, when the petitioner resides outside of the United States, the petition must be filed with the overseas office of the Service designated to act on the petition. This may be ascertained by consulting an American consul.

(iii) *Jurisdiction assumed by American consular officers.* American consular officers assigned to visa-issuing posts abroad, except those in Austria, Germany, Greece, Hong Kong, Italy, Korea, Mexico, the Philippines, Singapore, Uruguay, and Thailand are authorized to approve any petition on Form I-130 when the petitioner and beneficiary are physically present in the area over which the consular officers have jurisdiction. While these consular officers are authorized to approve petitions, they must refer any petition which is not clearly approvable to the appropriate Service office outside the United States for a decision.

(3) *Decision.* The petitioner will be notified of the decision, and, if the petition is denied, of the reasons for the denial, and of the petitioner's right to appeal to the Board within 15 days after mailing the notification of the decision in accordance with the provisions of Part 3 of this chapter.

(4) *Derivative beneficiaries.* Under section 203(a)(8) of the Act, a child or spouse accompanying or following to join an alien may be accorded the same preference as the alien without the approval of a separate petition if the immediate issuance of a visa is not otherwise available under section 203(a) (1) through (7) of the Act. However, no alien may be classified as an immediate relative as defined in section 201(b) of the Act unless he or she is the direct beneficiary of that classification. Therefore, a child or spouse of an alien who is classified as an immediate relative is not eligible for benefits under section 203(a)(8) and must file a separate petition.

(b) *Orphan*—(1) *Jurisdiction*—(i) *Petitioner residing in the United States.* A petitioner residing in the United States shall file a petition in behalf of a child defined in section 101(b)(1)(F) of the Act or an application for advance processing the petition with the Service office having jurisdiction over the place where the petitioner resides.

(ii) *Petitioner residing abroad*—(A) *General.* A petitioner residing outside of the United States shall file an orphan petition or advance processing application with the overseas or stateside office of the Service designated to act on the petition or application. This can be ascertained by consulting an American consul.

(B) *Petitioner residing in Canada.* Since no Service office in Canada is designated to process orphan cases, a petitioner residing in that country shall file an orphan petition or advance processing application with the office of the Service having jurisdiction over the place of the child's intended residence in the United States.

(iii) *Petitioner proceeding abroad when a district director at a stateside office has made a favorable determination concerning an advance processing application*—(A) *Jurisdiction retained by stateside office.* When a district director at a stateside office has made a favorable determination concerning an advance processing application and an unmarried petitioner or either a married petitioner or spouse or both are traveling abroad to locate a child, or are traveling abroad to adopt a child, the petition in behalf of the child may be filed at the stateside office if it will facilitate processing the petition.

(B) *Jurisdiction assumed by American consulate or embassy.* In an advance processing case where the petitioner does not wish to have the jurisdiction retained by the stateside Service office as provided in paragraph 204.1(b)(1)(iii)(A) of this section, the orphan petition may be filed at the American consulate or embassy having jurisdiction over the place where the child is residing unless the child is residing in Austria, Germany, Greece, Italy, Korea, the Philippines, Hong Kong, Mexico, Singapore, Republic of Panama, or Thailand.

(C) *Authority of consular officers.* An American consular officer is authorized to approve an orphan petition when the district director at a stateside Service office has made a favorable determination concerning an advance processing application and the unmarried petitioner or either the married petitioner or spouse or both have traveled abroad to locate or adopt a child or facilitate the adoption in the United States of a known child who resides in a country with no Service office. Consular officers, however, shall refer any petition which is not clearly approvable for a decision by the Service office having jurisdiction over the place where the child is residing. The consular officer's adjudication includes all aspects of eligibility for classification as an orphan under section 101(b)(1)(F) of the Act other than the ability of the prospective adoptive parent or parents to furnish proper care to the beneficiary orphan.

(D) *Jurisdiction assumed by overseas Service office.* If the child is residing in Austria, Germany, Greece, Italy, Korea, the Philippines, Hong Kong, Mexico, Singapore, Uruguay, or Thailand, the orphan petition may be filed at the overseas Service office having jurisdiction over the child's place of residence.

(2) *Petition*—(i) *Filing the petition.* A petition for a child as defined in section 101(b)(1)(F) of the Act must be filed on Form I-600 by a United States citizen. It must identify the child and must be accompanied by the fee required under § 103.7(b)(1) of this chapter. If the petitioner is married, the Form I-600 must also be signed by the petitioner's spouse. If unmarried, the petitioner must be at least twenty-five years of age at the time of the adoption and when the petition is filed.

(ii) *Decision.* The petitioner shall be notified of the decision. If the petition is denied, the petitioner shall be advised of the reasons for the denial and of the right to appeal in accordance with the provisions of Part 103 of this chapter. When the petition is denied, the fee will not be refunded.

(iii) *Child in the United States.* A child who is in parole status and who has not been adopted in the United States is eligible for the benefits of an orphan petition and adjustment of status to permanent residence when all the requirements of sections 101(b)(1)(F) and 204(e) of the Act have been met. A child in the United States either illegally or as a nonimmigrant, however, is ineligible for the benefits of an orphan petition and adjustment of status on that basis.

(3) *Advance processing application*—(i) *Circumstances when advance processing application may be filed.* A prospective petitioner may file an Application for Advance Processing of Orphan Petition, Form I-600A, when—

(A) A child has not been located and identified;

(B) The prospective petitioner, and/or spouse if married, is traveling abroad to locate a child for adoption in the United States or to adopt while abroad; or

(C) The prospective petitioner, and/or spouse if married, is traveling abroad to a country with no Service office to adopt a known child while abroad or facilitate the adoption of a known child in the United States and wants to file a petition, Form I-600, at the American consulate or embassy having jurisdiction over the child's place of residence.

(ii) *Filing the application.* A United States citizen may file Form I-600A. The certification of prospective petitioner must be completed. The form must be accompanied by the fee specified in § 103.7(b)(1) of this chapter. If the petitioner is married, the petitioner's spouse shall also sign the Form I-600A. If unmarried, the petitioner must be at least twenty-four years of age at the time of filing Form I-600A and at least twenty-five years of age at the time of the child's adoption and the filing of a petition, Form I-600, in behalf of the child.

(iii) *Disposition of advance processing application*—(A) *Favorable determination.* If the district director or officer in charge makes a favorable determination concerning the ability of the prospective adoptive parent or parents to furnish proper care to a beneficiary orphan if admitted to the United States, the district director or officer in charge shall advise the petitioner of the action taken. The district director or officer in charge shall also advise the petitioner that the advance processing application will be retained for one year from the date of completion of all advance processing, that if a child is not identified to this Service within that year, the application will be considered abandoned, and that any further proceedings will require the filing of a new advance processing application or an orphan petition.

(B) *Unfavorable determination.* When adverse information about the prospective adoptive parent or parents is developed which indicates that an orphan petition should not be approved because the prospective adoptive parent or parents are unable to furnish proper care to a beneficiary orphan, the district director or officer in charge shall render an unfavorable determination concerning the advance processing application. The district director or officer in charge shall advise the petitioner of the reasons for the unfavorable determination and of the right of appeal in accordance with the provisions of Part 103 of this chapter. When an unfavorable determination is made concerning an advance processing application, the fee will not be refunded.

(iv) *When a child is identified—(A) Pending advance processing application.* When a child is identified while an advance processing application is pending, the petitioner shall submit a completed Form I-600 with all documentary evidence relating to the child. A new fee is not required.

(B) *Completed advance processing application—favorable determination.* When a child is identified after there has been a favorable determination concerning an advance processing application, the petitioner shall submit a completed Form I-600 with all documentary evidence relating to the child. A new fee is not required if the petitioner submits the Form I-600 within one year from the date of completion of all advance processing.

(C) *Completed advance processing application—unfavorable determination.* If the petitioner submits a petition, Form I-600, in behalf of a child when there has been an unfavorable determination concerning an advance processing application, the fee specified in § 103.7(b)(1) of this chapter must be submitted. If the grounds for the unfavorable determination have not been overcome, the district director or officer in charge shall deny the petition.

(c) *Public Law 97-359 Amerasian*—(1) *Eligibility.* An alien is eligible for classification under section 201(b), 203(a)(1) or 203(a)(4) of the Act as the Amerasian child, son, or daughter of a United States citizen pursuant to section 204(g) of the Act if there is reason to believe that the alien—

(i) Was born in Korea, Vietnam, Laos, Kampuchea, or Thailand after December 31, 1950 and before October 22, 1982; and

(ii) Was fathered by a United States citizen.

(2) *Filing petition.* Any alien claiming to be eligible for benefits as a Pub. L. 97-359 Amerasian, or any person on the alien's behalf, may file a petition, Form I-360, Petition to Classify Pub. L. 97-359 Amerasian as the Child, Son, or Daughter of a United States Citizen, without fee. A natural person filing the petition must be eighteen years of age or older or an emancipated minor. In addition, a corporation incorporated in the United States may file the petition. The petition must be filed with the office of the Service having jurisdiction over the place of the alien's intended residence in the United States or with the overseas Service office having jurisdiction over the alien's residence abroad.

(3) *Two-stage processing of petition*—(i) *Preliminary processing.* Upon initial submission of a petition with the documentary evidence required by § 204.2(g)(1)(i), the district director or officer-in-charge shall adjudicate the petition to determine whether there is reason to believe the beneficiary was fathered by a United States citizen. If the preliminary processing is completed in a satisfactory manner, the district director or officer-in-charge shall advise the petitioner to submit the

documentary evidence required by § 204.2(g)(1)(ii) and (iii) and the fingerprints of the sponsor on Form FD-258 as required by § 204.2(g)(1)(iv) if they have not already been submitted. The petitioner must submit all requested documents within one year of the date of the request or the petition will be considered abandoned. To reactivate an abandoned petition, the petitioner must submit a new petition, Form I-360, without the previously submitted documentation, to the Service office having jurisdiction over the prior petition.

(ii) *Final processing.* Upon submission of the documentary evidence required by § 204.2(g)(1)(ii) and (iii) and, if applicable, § 204.2(g)(1)(iv), the district director or officer-in-charge shall complete the adjudication of the petition.

(4) *One-stage processing of petition.* If all documentary evidence required by § 204.2(g)(1)(ii), (iii), and (iv) is available when the petition is initially filed, the petitioner may submit it at that time. In that case, the district director or officer-in-charge shall consider all evidence without using the two-stage processing procedure under paragraph (c)(3) of this section.

(5) *Decision*—(i) *General.* The district director or officer-in-charge shall notify the petitioner of the decision and, if the petition is denied, of the reasons for the denial.

(ii) *Denial upon completion of preliminary processing.* The district director or officer-in-charge may deny the petition upon completion of the preliminary processing under paragraph (c)(3) of this section for—

(A) Failure to establish that there is reason to believe the alien was fathered by a United States citizen; or

(B) Failure to meet the sponsorship requirements if the fingerprints of the sponsor, required by § 204.2(g)(1)(iv), were submitted during the preliminary processing and the completed background check of the sponsor discloses adverse information resulting in a finding that the sponsor is not of good moral character.

(iii) *Denial upon completion of final processing.* The district director or officer-in-charge may deny the petition upon completion of the final processing for failure to establish that the sponsorship requirements or one or more of the other applicable requirements have been met.

(iv) *Denial upon completion of one-stage processing.* The district director or officer-in-charge may deny the petition upon completion of all processing for failure to meet any of the applicable requirements in a case being processed under the one-stage processing described in paragraph (c)(4) of this section.

(v) *Appeal.* If the petition is denied, the petitioner may appeal the decision under Part 103 of this chapter.

(6) *Classification of Pub. L. 97-359 Amerasian.* If the petition is approved the beneficiary is classified as follows:

(i) An unmarried beneficiary under the age of twenty-one is classified as the child of a United States citizen under section 201(b) of the Act.

(ii) An unmarried beneficiary twenty-one years of age or older is classified as the unmarried son or daughter of a United States citizen under section 203(a)(1) of the Act.

(iii) A married beneficiary is classified as the married son or daughter of a United States citizen under section 203(a)(4) of the Act.

(d) *Petition under section 203 (a)(3) or (6)*—(1) *General.* A petition to classify the status of an alien under section 203(a) (3) or (6) of the Act shall be filed on Form I-140. For each beneficiary a separate Form I-140 must be submitted, accompanied by the fee required under § 103.7(b) of this chapter. Before the petition may be accepted and considered properly filed, the petitioner or authorized representative shall sign the visa petition (under penalty of perjury) in the block provided on the form. The petition must be accompanied by a completed Labor Department Form ETA 750, Application for Alien Employment Certification, including Part A, Offer of Employment, and Part B, Statement of Qualifications of Alien. The certification under section 212(a)(14) of the Act must be affixed to Part A of this form by the Secretary of Labor or the Secretary's designated representative, except that such certification may be omitted if the beneficiary is qualified for and will be engaged in an occupation currently listed in the Department of Labor's Schedule A (20 CFR Part 656). The petition shall be filed in the office of the Service having jurisdiction over the place of intended employment, except that when accompanied by an application for adjustment of status, a petition may be filed and a decision thereon made in the Service office having jurisdiction over the place where the beneficiary is residing.

(2) *Filing date.* In the case of a third or sixth preference petition (except for an occupation listed in Schedule A), the filing date of the petition within the meaning of section 203(c) of the Act shall be the date the request for certification was accepted for processing by any office within the employment service system of the Department of Labor. In the case of a third or sixth preference petition for an occupation listed in Schedule A the filing date of the petition shall be the date it was properly filed with the appropriate Service office.

(3) *Sixth-preference petition for member of the professions or person having exceptional ability in the sciences or arts.* Nothing contained in this part shall preclude an employer who desires and intends to employ an alien who is a member of the professions or a person having exceptional ability in the sciences or the arts from filing a petition for a sixth-preference classification; however, any such petition shall be subject to the requirements of this part governing sixth-preference petitions.

(4) *Interview and decision.* Prior to decision by the district director, the beneficiary and the petitioner may be required as a matter of discretion to appear in person before an immigration or consular officer and be interrogated under oath concerning the allegations in the petition. The petitioner shall be notified of the decision and, if the petition is denied, of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter. However, no appeal shall lie from a decision denying a petition for lack of a certification by the Secretary of Labor pursuant to section 212(a)(14) of the Act.

[41 FR 11171, Mar. 17, 1976, as amended at 41 FR 55847, Dec. 23, 1976; 43 FR 33677, Aug. 1, 1978; 45 FR 19545, Mar. 26, 1980; 45 FR 75167, Nov. 14, 1980; 45 FR 76652, Nov. 20, 1980; 46 FR 46563, Sept. 21, 1981; 48 FR 4452, Feb. 1, 1983; 48 FR 19154, Apr. 28, 1983; 48 FR 30350, July 1, 1983; 49 FR 23828, June 8, 1984; 49 FR 33433, Aug. 23, 1984; 50 FR 3315, Jan. 24, 1985]

§ 204.2 Documents.

(a) *Evidence of U.S. citizenship*—(1) *Birth in the United States.* A petition filed under § 204.1 (a) or (b) by a United States citizen whose citizenship is based on birth in the United States must be accompanied by the petitioner's birth certificate; or, if such birth certificate is unobtainable, by a copy of his/her baptismal certificate under seal of the church, showing place of birth and a date of baptism occurring within two months after birth; or if a birth or baptismal certificate cannot be obtained, by affidavits of two United States citizens who have personal knowledge of the petitioner's birth in the United States; or by an unexpired United States passport issued initially for a full five-year period to the petitioner as a citizen of the United States (and not merely as a noncitizen national). A statement executed by a U.S. consular officer, certifying the petitioner to be a United States citizen and the bearer of such a currently valid United States passport, may be accepted in lieu of the passport. When a *native-born* member of the armed forces of the United States serving outside the United States submits a petition without documentary proof of birth in the United States, a statement from the appropriate authority of the armed forces to the effect that the personnel records of the armed forces show the petitioner was born in the United States on a certain date may be accepted as proof of birth in the United States if the approving officer finds that to require documentary proof of the petitioner's birth in the United States would cause the petitioner unusual delay or hardship.

(2) *Birth outside the United States.* A petition filed under § 204.1(a) or (b) of this part by a United States citizen born abroad who became a citizen

through the naturalization or citizenship of a parent or spouse, and who has not been issued a certificate of citizenship in his or her name, must be accompanied by evidence of the citizenship and marriage of such parent or spouse, as well as the legal termination of any prior marriages. In addition, if the petitioner claims citizenship through a parent, the petitioner must submit the parent's birth certificate. If the petitioner is a naturalized citizen whose naturalization occurred within 90 days immediately preceding the filing of the petition, or if it occurred prior to September 27, 1906, the naturalization certificate must accompany the petition. Department of State Form FS-240, Report of Birth Abroad of a Citizen of the United States, will be accepted as proof of United States citizenship. An unexpired United States passport issued initially for a full five-year or ten-year period to the petitioner as a citizen of the United States (and not merely as a noncitizen national) will be accepted as proof of the petitioner's United States citizenship. Similarly, a statement executed by a United States consular officer certifying the petitioner to be a United States citizen and the bearer of a currently valid United States passport will be accepted in lieu of the passport.

(b) *Evidence of lawful admission for permanent residence.* The status of a petitioner who claims that he is a lawful permanent resident alien of the United States will be verified from official records of the Service. In the absence of such a record, the petitioner shall be required to establish that he is a lawful permanent resident alien by the submission of evidence such as his passport bearing a Service endorsement reflecting a lawful admission for permanent residence, his Form I-151 or I-551 alien registration receipt card, or his immigrant identification card.

(c) *Evidence of family relationship between petitioner and beneficiary*—(1) *General.* A petition filed under § 204.1 (a) must be accompanied by evidence of family relationship.

(2) *Petition for a spouse.* If a petition is submitted on behalf of a wife or husband, it must be accompanied by a certificate of marriage to the beneficiary and proof of the legal termination of all previous marriages of both wife and husband.

(3) *Petition for child.* If a petition is submitted by a mother in behalf of a child, regardless of the child's age, the birth certificate of the child showing the name of the mother must accompany the petition. If a petition is submitted by a father or stepparent in behalf of a child, regardless of age, a certificate of marriage of the parents, proof of legal termination of their prior marriages, and the birth certificate of the child must accompany the petition.

(4) *Petition for a brother or sister.* If a petition is submitted on behalf of a brother or sister, the birth certificate of the petitioner and the birth certificate of the beneficiary, showing a common mother, must accompany the petition. If the petition is on behalf of a brother or sister having a common father and different mothers, the marriage certificate of the petitioner's parents, and the beneficiary's parents, and proof of the legal termination of the parents' prior marriages, if any, must accompany the petition.

(5) *Petition in behalf of a parent.* If a petition is submitted in behalf of a mother, the petitioner's birth certificate showing the name of the mother must accompany the petition. If a petition is submitted in behalf of a father or stepparent, the petitioner's birth certificate and the marriage certificate of his/her parent and stepparent must accompany the petition, as well as proof of the legal termination of their prior marriages, if any.

(6) *Married women.* If either the petitioner or the beneficiary is a married woman, her marriage certificate must accompany the petition. However, when the relationship between the petitioner and beneficiary is that of a mother and child, regardless of the child's age, the mother's marriage certificate need not be submitted if the mother's present married name appears on the birth certificate of the child.

(7) *Relationship by adoption.* If the petitioner and the beneficiary are related to each other by adoption, a certified copy of the adoption decree must accompany the petition. Immi-

gration benefits may be obtained under section 101(b)(1)(E) or 101(b)(2) of the Act by virtue of an adoptive relationship if the child was adopted while under the age of sixteen and the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years. Legal custody must occur after the adoption. Residence occurring prior to or after the adoption will satisfy the residence requirement. A child adopted under the age of sixteen years is a "child" for purposes of sections 101(b)(1)(E) and 101(b)(2) of the Act.

(8) *Blood tests.* When a blood relationship is claimed, the district director may require that blood tests be conducted of the petitioner, beneficiary, and other family members. Such blood tests shall be conducted at the expense of the petitioner by the United States Public Health Service or by a qualified medical specialist designated by the district director. Refusal to submit to blood tests when required may constitute a basis for denial of the petition. When the petitioner, the beneficiary, or other family members are outside the United States, a visa petition may be approved on condition that the results of any requested blood tests will show that the existence of the claimed relationship is not precluded. When a visa petition is approved conditionally, the names and addresses of the persons of whom blood tests are to be conducted shall be set forth by the district director in the visa petition and in the notice of approval. Upon receipt of medical advise that the blood test results preclude the existence of the claimed blood relationship between the petitioner and the beneficiary, the district director shall withdraw his conditional approval and shall reopen the visa petition proceeding.

(d) *Evidence required to accompany petition for orphan*—(1) *General.* As used in these regulations, the term "agency" includes both organizations and individuals, and the term "responsible state agency" means the public adoption agency in any state in the United States authorized by statute or license to perform home studies. A petition filed on behalf of an orphan under § 204.1(b) must be accompanied by:

(i) A valid home study which has been favorably recommended by an agency of the state of the child's proposed residence, or by an agency authorized by that state to conduct such a study, or, in the case of a child adopted abroad, by an appropriate public or a private adoption agency licensed in the United States; (ii) finger prints on Form FD-258 of the United States citizen petitioner and spouse, if married; (iii) evidence of the age and the United States citizenship of the petitioner as provided for in paragraph (a) of this section; (iv) a marriage certificate of the married petitioner and spouse, if married and/or evidence of the termination of any previous marriages; if applicable; (v) the child's birth certificate, or, if a certificate is not available, other proof of age; (vi) evidence that the sole or surviving parent is incapable of providing for the orphan's care and has irrevocably released the orphan for emigration and adoption, if the orphan has only one parent; (vii) death certificate(s) of the child's parent(s), if applicable; and (viii) a certified copy of the adoption decree together with a copy of the certified translation if the child has been adopted abroad. A child shall be considered as having a sole parent, his/her mother, when it is established that the child is illegitimate and has not acquired a stepparent within the contemplation of section 101(b)(2) of the Act. A child shall be considered as having a surviving parent when it is established that one of the child's parents is living while one is deceased and the child has not acquired a stepparent within the meaning of section 101(b)(2) of the Act. When a child who has a sole or surviving parent has been adopted abroad, the requirement for an irrevocable release in writing for the child's emigration and adoption shall be considered to have been met if the adoption decree clearly sets forth that the adoptive petitioner and spouse, if married, reside in the United States and that the child's only parent has agreed to release the child for adoption. A child who has been unconditionally abandoned to an orphanage shall be considered as having no parents. However, a child shall not be considered as having been abandoned when he/she has been placed temporarily in an orphanage, if the parent or parents intend to retrieve the child, or the parent or parents are contributing or attempting to contribute to the child's support, or the parent or parents otherwise exhibit that they have not terminated their parental obligations to the child. If the child was adopted abroad by an unmarried United States citizen, the latter must have been at least twenty-five years of age at the time the child was adopted; if such adoption was by a married United States citizen, the decree shall show that the adoption was by husband and wife jointly.

(2) *Valid home study*—(i) *Child coming to the United States for adoption.* A home study for a child to be adopted in the United States is considered to be valid if it contains the following:

(A) A factual evaluation of the financial, physical, mental, and moral capabilities of the prospective parent or parents to rear and educate the child properly.

(B) A detailed description of the living accommodations where the prospective parent or parents currently reside.

(C) A detailed description of the living accommodations in the United States where the child will reside, if known.

(D) A statement or attachment recommending the proposed adoption signed by an official of the responsible state agency in the state of the child's proposed residence or signed by an official of an agency authorized by that state. When a home study contains a favorable recommendation by an agency claiming to be authorized by the state of the child's proposed residence, it will not be accepted as valid unless the District Director is satisfied that the recommending agency is authorized to conduct the home study. If the recommending agency is a licensed adoption agency, the recommendation shall set forth that it is licensed, the state in which it is licensed, its license number, if any, and the period of validity of its license. The District Director may require such proof of licensure as is deemed necessary. The authorized agency need not be located in the state of the child's proposed residence or anywhere in the United States.

(ii) *Child adopted abroad.* A home study for a child adopted abroad is considered to be valid if it contains the following:

(A) A factual evaluation of the financial, physical, mental, and moral capabilities of the adoptive parent or parents to rear and educate the child properly.

(B) A detailed description of the living accommodations where the adoptive parent or parents currently reside.

(C) A detailed description of the living accommodations in the United States where the child will reside, if known.

(D) A statement or attachment recommending or approving of the adoption signed by an official of an appropriate public or private adoption agency which is licensed in any state in the United States. For purposes of this regulation, the responsible state agency in any state of the United States shall be considered to be an appropriate public agency which is licensed in the United States. The home study of any agency other than a responsible State agency will not be considered valid unless the District Director is satisfied that the agency is licensed by a state in the United States. The recommendation of such licensed agency shall set forth that it is licensed, the State in which it is licensed, its license number, if any, and the period of validity of its license. The District Director may require such proof of licensure as is deemed necessary. The licensed agency need not be located in the United States.

(iii) *Research and preparation of home study.* Research, including interviewing, and the preparation of the home study may be done by an individual or group in the United States or abroad, approved or authorized by the agency which makes the determination that the home study is favorably recommended.

(3) *Preadoption requirements.* If the orphan is to be adopted in the United States, the petitioner must submit evi-

dence of compliance with the preadoption requirements, if any, of the state of the orphan's proposed residence, except any such requirements that cannot be complied with prior to the child's arrival in the United States. If the child is to be adopted in the United States by an unmarried United States citizen, the petitioner must also establish that adoption by an unmarried person is permitted in the state of the child's proposed residence.

(4) *Beneficiary whose adoption abroad not deemed valid or who is adopted abroad without having been seen and observed.* An orphan whose adoption abroad is determined by the Service to be invalid for benefits under the immigration or nationality laws, or who is adopted abroad without having been personally seen and observed by the petitioner (and by the spouse, if married) prior to or during the adoption proceedings, shall be processed as a child coming to the United States for adoption. Before a petition in behalf of such a child is approved, the petitioner (and spouse, if married) must submit a statement indicating the petitioner's and, if married, the spouse's willingness and intent to readopt the child in the United States. Unless the Service has already ascertained from the appropriate state authority that readoption is permissible in that state, the petitioner shall be required to submit evidence in the form of a statement from the court having jurisdiction over adoption, the State department of welfare, or the attorney general of the state, indicating that readoption is permissible. As in the case of a petition for any other orphan coming to the United States for adoption, evidence of compliance with the preadoption requirements, if any, of the State of proposed residence must be submitted. If the child is to be readopted in the United States by an unmarried United States citizen, the petitioner must also establish that adoption by an unmarried person is permitted in the state of the child's proposed residence.

(e) *Preliminary processing of orphan petition without full documentation or home study.* When a child has been identified but the documentary evidence relating to him/her or the home study is not yet available, an orphan petition may be filed without such evidence or home study. All other evidence and the fingerprints required in paragraph (d)(1) of this section, however, must be submitted. The petition will not be considered properly filed until complete documentary evidence relating to the child and the home study are furnished. If the necessary evidence and home study are not submitted within one year from the date of submission of the petition, the petition will be considered abandoned, and the fee will not be refunded. Any further proceedings will require the filing of a new petition.

(f) *Evidence to be furnished with application for advance processing of orphan petition.* An Application for Advance Processing of Orphan Petition, Form I-600A, must be accompanied by—

(1) Fingerprints on Form FD-258 of the United States citizen petitioner and spouse, if married;

(2) Documentary evidence relating to the petitioner and spouse, if married, as provided in paragraph (d)(1) of this section; and

(3) A valid home study as described in paragraph (d)(2) of this section, if available. If not available, the home study must be submitted within one year from the date of submission of the advance processing application or the application will be considered abandoned.

(g) *Evidence required to accompany petition for Amerasian child of a United States citizen*—(1) *Two-stage processing of petition*—(i) *Preliminary processing.* A petition filed by or on behalf of an Amerasian under § 204.1(c) must be accompanied by the following:

(A) Evidence that the beneficiary was born in Korea, Vietnam, Laos, Kampuchea or Thailand after December 31, 1950 and before October 22, 1982. If the beneficiary was born in Vietnam, the beneficiary's I.D. card must be submitted, if available. If it is not available, the petitioner must submit an affidavit explaining why the beneficiary's I.D. card is not available.

(B) Evidence that the beneficiary was fathered by a United States citizen. The putative father must have been a United States citizen at the time of the beneficiary's birth or a United States citizen at the time of his death if he died prior to the beneficiary's birth. It is not required, however, that the name of the father be given. Submit as many documents as may be obtained, including, but not limited to:

(*1*) The beneficiary's birth and baptismal certificates or other religious documents;

(*2*) Local civil records;

(*3*) Affidavits from knowledgeable witnesses;

(*4*) Letters from, or evidence of financial support from the beneficiary's putative father;

(*5*) Photographs of the beneficiary's putative father, especially with the beneficiary; and

(*6*) Evidence of the putative father's United States citizenship.

(C) The beneficiary's photograph.

(D) The beneficiary's marriage certificate, if married, and evidence of termination of any previous marriages, if applicable.

(E) If the beneficiary is under eighteen years of age, an irrevocable release in writing for emigration from the beneficiary's mother or legal guardian. The mother or guardian must authorize the placing agency or agencies to make necessary decisions for the child's immediate care until the sponsor receives custody. Interim costs incurred are the responsibility of the sponsor. The mother or guardian must show an understanding of the effects of the release and state whether any money was paid or any coercion was used prior to signing the release. The signature of the mother or guardian must be authenticated by the local registrar, the court of minors, or a United States immigration or consular officer. The release must include the full name, date and place of birth, and present or permanent address of the mother or guardian.

(ii) *Final processing.* If the district director or officer-in-charge notifies the petitioner that all preliminary processing has been completed in a satisfactory manner, the petitioner must then submit the following:

(A) Form I-361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Pub. L. 97-359 Amerasian, executed by the beneficiary's sponsor with the documentary evidence of the sponsor's financial ability required by that form. If the beneficiary is under eighteen years of age, the sponsor must agree to petition the court having jurisdiction within thirty days of the beneficiary's arrival in the United States to be awarded legal custody in accordance with the laws of the state where the beneficiary will reside until the beneficiary is eighteen years of age. The term "legal custody" means the assumption of responsibility for a minor by an adult under the laws of the state in a court of law. The sponsor must be a United States citizen or lawful permanent resident twenty-one years of age or older who is of good moral character.

(B) Evidence of the age of the beneficiary's sponsor.

(C) Evidence of the United States citizenship of the beneficiary's sponsor as provided in paragraph (a) of this section or evidence of the lawful permanent residence of the sponsor as provided in paragraph (b) of this section.

(D) If the beneficiary is under eighteen years of age, evidence that a public, private, or state agency licensed in the United States to place children and actively involved, with recent experience, in the intercountry placement of children has arranged the beneficiary's placement in the United States and that the sponsor with whom the beneficiary is being placed is able to accept the beneficiary for care in the sponsor's home under the laws of the state of the beneficiary's intended residence. The agency must demonstrate a capability, including financial capability, to arrange the placement, as described in paragraph (g)(1)(iii) of this section, directly, or through cooperative agreement, with other suitable provider(s) of service.

(iii) *Arrangements for placement of a beneficiary under eighteen.* If the beneficiary is under eighteen years of age, the petitioner must submit the following evidence of the placement arrangement required by paragraph (g)(ii)(D) of this section:

(A) A favorable home study of the sponsor to be conducted by an agency legally authorized to conduct that study in the jurisdiction of placement or, if the sponsor is residing outside the United States, a home study conducted by any agency, and favorably recommended by an agency legally authorized to conduct home studies in the state of the sponsor's and beneficiary's intended residence in the United States.

(B) A plan from the agency to provide follow-up services including mediation and counseling as required to assure a satisfactory adjustment of the sponsor and the beneficiary to the placement and to determine whether the terms of the sponsorship are being upheld.

(C) A report from the agency of the placement including information regarding any family separation or dislocation abroad that results from the placement. In addition, the agency must submit to the Director, Outreach Program, Immigration and Naturalization Service, Washington, DC, within ninety days of each occurrence, reports of any breakdowns in sponsorship that occur, and reports of the steps taken to remedy these breakdowns.

(D) A statement from the agency—

(*1*) Indicating that the sponsor, before signing the sponsorship agreement, has been provided a report covering pre-placement screening and evaluation, including health evaluation, of the beneficiary;

(*2*) Describing the agency's orientation of both the sponsor and the beneficiary on the legal and cultural aspects of the placement;

(*3*) Describing the initial facilitation of the placement through introduction, translation, and similar services; and

(*4*) Describing the contingency plans to place the beneficiary in another suitable home if the initial placement fails. The new sponsor must execute and submit a Form I-361 to the Service office having jurisdiction over the beneficiary's residence in the United States. The original sponsor nonetheless retains financial responsibility for the beneficiary under the terms of the guarantee of financial support and intent to petition for legal custody which that sponsor executed unless that responsibility is assumed by a new sponsor. In the event that the new sponsor does not comply with the terms of the new guarantee of financial support and intent to petition for legal custody and, for one reason or another, that guarantee is not enforced, the original sponsor again becomes financially responsible for the beneficiary.

(iv) *Fingerprints of sponsor.* The petitioner must submit the fingerprints of the sponsor on Form FD-258. The petitioner may submit Form FD-258 at any time during the processing of the petition. The Form FD-258 must reflect the ORI number (originating agency number), or special office code, relating to the Service office where the petition is filed if that office has forms FD-258 with the relating ORI number.

(2) *One-stage processing of petition.* If the petitioner chooses to have the petition processed under the one-stage processing procedure described in § 204.1(c)(4), the petitioner must submit all evidence required by paragraph (g)(1) of this section.

(h) *Enforcement of affidavit of financial support and intent to petition for legal custody.* A guarantee of financial support and intent to petition for legal custody on Form I-361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Pub. L. 97-359 Amerasian, may be enforced against the alien's sponsor in a civil suit brought by the Attorney General in the United States district court [illegible] the district in which the sponsor resides, except that the sponsor's estate is not liable under the guarantee if the sponsor dies or is adjudicated a bankrupt under Title 11, United States Code. If, after admission to the United States, the beneficiary of a petition for a Pub. L. 97-359 Amerasian requires enforcement of the guarantee of financial support and intent to petition for legal custody executed by the beneficiary's sponsor, the beneficiary may file Form I-363, Request to Enforce Affidavit of Financial Support and Intent to Petition for Legal Custody for Pub. L. 97-359 Amerasian, with the office of the Service having jurisdiction over the beneficiary's residence in the United States. If the beneficiary is under eighteen years of age, any agency or individual (other than the sponsor) having legal custody of the beneficiary or a guardian ad litem may file Form I-363.

(i) *Evidence of eligibility for third- or sixth-preference classification*—(1) *General.* The documentary evidence which the petitioner must submit to establish the beneficiary's eligibility under section 203(a) (3) or (6) of the Act shall include Statement of Qualifications of Alien and the Job Offer for Alien Employment forms as provided in § 204.1(c), and any documents required to be presented with those forms. If the alien's eligibility is based in whole or in part on higher education, a certified copy of his school record shall be submitted. The record must show the period of attendance, major field of study, and the degrees or diplomas awarded. If the alien has received a license or other official permission to practice his profession, the license or other official permit to practice must also be submitted. If the alien's eligibility is based on a claim of exceptional ability in the sciences or the arts, documentary evidence supporting the claim must be submitted by the petitioner. Such evidence may attest to the universal acclaim and either the national or international recognition accorded to the alien; that he has received a nationally or internationally recognized prize or award or won a nationally or internationally recognized competition for excellence for a specific product or performance or for outstanding achievement; or that he is a member of a national or international association of persons which maintains standards of membership recognizing outstanding achievement as judged by recognized national or international experts in a specific discipline or field of endeavor. An affidavit attesting to an alien's exceptional ability in the sciences or the arts must set forth the name and address of the affiant, state how he has acquired his knowledge of the alien's qualifications, and must describe in detail the facts on which the affiant bases his assessment of the alien's qualifications. If material published by or about the alien is submitted, it must be accompanied by information as to the date, place, and title of the publication. If the alien's eligibility is based on training or experience, affidavits by the trainers or employers attesting to the training or experience which they provided to the alien must be submitted by the petitioner. These affidavits must set forth the name and address of the affiant, state how he acquired his knowledge of the alien's qualifications, state the places where and the dates between which the alien gained the training or experience, and describe in detail the duties performed by the alien, any tools used, and any supervision received or exercised by the alien. If such affidavits cannot be obtained, the petitioner shall submit an affidavit by the alien beneficiary attesting to the reasons therefor, and shall also submit other documentary evidence of the alien's qualifications, such as copies of company records or affidavits by persons other than the alien's trainers or employers having personal knowledge of the facts to which the affiants are attesting, setting forth the information specified in the preceding sentence.

(2) *Physicians or surgeons.* An alien who is coming to the United States principally to perform services as a member of the medical profession shall not be considered eligible for classification as a third or sixth preference immigrant unless he establishes that he is a graduate of a medical school or has qualified to practice medicine in a foreign state; has passed parts I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health, Education, and Welfare); and is competent in oral and written English.

(2a) *Dentists.* An alien dentist shall be considered eligible for classification as a member of the professions if he establishes that he was graduated from a dental school in the United States or Canada, or that he was graduated from a foreign dental school and has obtained a full and unrestricted license to practice dentistry in the country where he obtained his dental education. In any other case the district director may consult with organiza-

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tions and experts in the dental field for the purpose of obtaining an advisory opinion of the alien's qualifications as a dentist.

(3) *Advisory opinion.* The district director may request the Employment and Training Administration to furnish an advisory opinion concerning the qualifications of the beneficiary of a petition under section 203(a) (3) or (6) of the Act.

(4) *Certification under section 212 (a)(14).* No third or sixth preference petition shall be approvable unless it is supported by a valid labor certification issued under section 212(a)(14) of the Act. An alien whose occupation is currently listed in Schedule A (20 CFR Part 656) will be considered as having obtained a certification under section 212(a)(14) of the Act upon determination by the district director that the alien is qualified for and will be engaged in such occupation. In the case of an alien whose occupation is currently listed in Schedule B, the Secretary of Labor has announced that the determination and certification required by section 212(a)(14) of the Act cannot now be made (20 CFR Part 656). In the case of any other alien, his employer or prospective employer may apply for certification under section 212(a)(14) of the Act by submitting properly executed Statement of Qualifications of Alien and the Job Offer for Alien Employment forms together with the documentary evidence required by the instructions for completion of the forms, to the local office of the State Employment Service serving the area of intended employment. Information concerning the categories of employment listed in Labor Department Schedules (20 CFR Part 656) may be obtained from principal offices of the Service, from State Employment Services offices and from United States consular offices.

(j) *Certification of documents*—(1) *By attorneys.* A copy of a document submitted in support of a visa petition filed pursuant to section 204 of the Act and this part may be accepted, though unaccompanied by the original, if the copy bears a certification by an attorney typed or rubber-stamped in the following language:

I certify that I have compared this copy with its original and it is a true and complete copy.

Signed: ——— Date: ———
Name: ———, Attorney at Law
Address: ————————————————
Admitted to Practice in State of ————

(2) *By accredited representatives of recognized nonprofit voluntary agencies under § 292.2 of this chapter.* A copy of a document submitted in support of a visa petition filed pursuant to section 204 of the Act and this Part may be accepted, though unaccompanied by the original, if the copy bears a certification by an accredited representative, typed or rubber-stamped in the following language:

I certify that I have compared this copy with its original and it is a true and complete copy.

Signed: ——— Date: ———
Name: ———, Accredited Representative
Agency: ——— ————————————
Agency Address: ——————————
Date of Agency Recognition: ——————
Date of Representative Accreditation: ———

(3) *Original document.* The original document must be submitted if requested by the Service.

(4) *Authentication.* Certification of documents must be authenticated by an original signature. A facsimile signature on a rubber stamp will not be acceptable.

(Sec. 103; 8 U.S.C. 1103 and sec. 3 of Pub. L. 95-417 (92 Stat. 917);Sec. 201(b), 203(a)(1), 203(a)(4), and 204(g) of the Immigration and Nationality Act, as amended; 8 U.S.C. 1151(b), 1153(a)(1), 1153(a)(4), and 1154(g))

[30 FR 14773, Nov. 30, 1965]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 204.2, see the List of CFR Sections Affected in the Finding Aids section of this volume.

§ 204.3 Disposition of approved petitions.

If the beneficiary of an approved petition will apply to an American consulate for a visa, the approved petition shall be forwarded to the consulate designated by the petitioner. When the beneficiary of an approved petition will file an application for adjustment of status under section 245 of the Act, the approved petition will be retained by the Service for consideration in connection with that application.

[30 FR 14775, Nov. 30, 1965]

§ 204.4 Validity of approved petitions.

(a) *Relative petitions.* Unless revoked pursuant to section 203(e) of the Act or Part 205 of this chapter, the approval of a petition to classify an alien as a preference immigrant under section 203(a) (1), (2), (4), or (5) of the Act, or as an immediate relative under section 201(b) of the Act, shall remain valid for the duration of the relationship to the petitioner, and status, as established in the petition.

(b) *Petitions under sections 203(a) (3) and (6).* Unless revoked pursuant to section 203(e) of the Act or Part 205 of this chapter, the approval of a petition to classify an alien as a preference immigrant under section 203(a) (3) or (6) of the Act shall remain valid for as long as the supporting labor certification is valid and unexpired, provided there is no change in the respective intentions of the prospective employer and the beneficiary that the beneficiary will be employed by the employer in the capacity indicated in the supporting job offer. The approval of a petition to classify an alien under section 203(a) (3) or (6) of the Act which had heretofore become invalid solely because of expiration of the period of validity, is hereby reinstated provided the conditions of this paragraph are met.

(c) *Subsequent petition by same petitioner for same beneficiary.* When a visa petition has been approved, and subsequently a new petition by the same petitioner is approved for the same preference classification in behalf of the same beneficiary, the latter approval shall be regarded as a reaffirmation or reinstatement of the validity of the original petition, except when the original petition has been revoked under section 203(e) of the Act.

(d) *Petitions for natives of former Western Hemisphere dependent areas.* An approved visa petition which previous to January 1, 1977 granted a preference classification to a beneficiary who was at the time of approval a native of a dependent area in the Western Hemisphere, and which thereafter became inoperative solely because that area became an independent country, shall on and after January 1, 1977 be considered reinstated provided the status and relationship on the basis of which the petition was originally approved continue unchanged and provided any necessary labor certification remains valid.

(e) *Revocation.* The validity of any petition under this section may be revoked pursuant to the provisions of Part 205 of this chapter prior to the time limitations set forth herein.

(f) *Exception to revalidation.* Any petition approved under section 204(b) of the Act ceases to convey a priority date or visa classification, and cannot be restored after it has been used by a beneficiary to obtain either an adjustment of status to lawful permanent residence or admission as an immigrant to lawful residence based upon a consular immigrant visa.

[35 FR 7284, May 9, 1970, as amended at 41 FR 55848, Dec. 23, 1976; 42 FR 15302, Mar. 21, 1977; 46 FR 29924, June 4, 1981]

§ 204.5 Automatic conversion of classification of beneficiary.

(a) *By change in beneficiary's marital status.* (1) A currently valid petition previously approved to classify the beneficiary as the unmarried son or daughter of a U.S. citizen under section 203(a)(1) of the Act shall be regarded as approved for preference status under section 203(a)(4) of the Act as of the date the beneficiary marries. A currently valid petition previously approved to classify the child of a United States citizen as an immediate relative under section 201(b) of the Act shall also be regarded as approved for preference status under section 203(a)(4) of the Act as of the date the beneficiary marries.

(2) A currently valid petition classifying the married son or married daughter of a United States citizen for preference status under section 203(a)(4) of the Act shall, upon the presentation of satisfactory evidence of the legal termination of the beneficiary's marriage, be regarded as approved for preference status under section 203(a)(1) of the Act or, if the beneficiary is under 21 years of age, for status as an immediate relative

under section 201(b) of the Act, as of the date of termination of the marriage.

(b) *By beneficiary's attainment of the age of 21 years.* A currently valid petition classifying the child of a United States citizen as an immediate relative under section 201(b) of the Act shall be regarded as approved for preference status under section 203(a)(1) of the Act as of the beneficiary's attainment of his twenty-first birthday if he is still unmarried.

(c) *By petitioner's naturalization.* Effective upon the date of naturalization of a petitioner who had been lawfully admitted for permanent residence, a currently valid petition according preference status under section 203(a)(2) of the Act to the petitioner's spouse, unmarried son, or unmarried daughter, shall be regarded as approved to accord status as an immediate relative under section 201(b) of the Act to the spouse, and unmarried son or unmarried daughter who is under 21 years of age, and to accord preference status under section 203(a)(1) of the Act to the unmarried son or unmarried daughter who is 21 years of age or older.

[30 FR 14775, Nov. 30, 1965, as amended at 41 FR 55849, Dec. 23, 1976]

§ 204.6 Effect of changed employment on priority date.

(a) *Petition for third preference classification.* When the beneficiary of an approved third preference petition no longer intends to accept employment with the prospective employer or the offer of employment is withdrawn, the petition shall be deemed invalid and the beneficiary shall no longer be entitled to a priority date as of the date of filing of the petition. However, upon submission of a new Job Offer for Alien Employment form, and an individual labor certification under section 212(a)(14) in the case of an occupation not listed in Schedule A, the petition shall be deemed reinstated with the original priority date. The provisions of the paragraph shall not apply when the original petition has been revoked under section 203(e) of the Act.

(b) *Petition for sixth preference classification.* When a new petition by another employer is approved in behalf of the beneficiary of a previously approved sixth-preference petition, and the beneficiary has accepted or intends to accept employment with the new petitioner, the beneficiary shall no longer be entitled to a priority date as of the date of filing of the original petition and that petition shall be deemed invalid. Instead, his priority date shall be the date of filing of the subsequently approved petition for sixth-preference classification. However, the original petition shall be deemed reinstated and the original priority date shall be restored if the beneficiary returns to the original petitioner's employment or established that he intends upon arrival in the United States to be employed by the original employer as specified in the original petition. The provisions of this paragraph shall not apply when the original petition has been revoked under section 203(e) of the Act.

[41 FR 55849, Dec. 23, 1976]

§ 204.7 Preservation of benefits contained in savings clause of Immigration and Nationality Act Amendments of 1976.

In order to be considered eligible for the benefits of the savings clause contained in section 9 of the Immigration and Nationality Act Amendments of 1976, an alien must show that the facts established prior to January 1, 1977 upon which the entitlement to such benefits was based continue to exist.

[41 FR 55849, Dec. 23, 1976]

PART 205—REVOCATION OF APPROVAL OF PETITIONS

Sec.
205.1 Automatic revocation.
205.2 Revocation on notice.

AUTHORITY: Secs. 101, 103, 201, 203, 204, 205, 212, 66 Stat. 166, 173, 175, 178, 179, 180, 182; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1155, 1182.

§ 205.1 Automatic revocation.

The approval of a petition made under section 204 of the Act and in accordance with Part 204 of this chapter is revoked as of the date of approval if the Secretary of State shall terminate the registration of any beneficiary pursuant to the provisions of section 203(e) of the Act or if any of the following circumstances occur before the beneficiary's journey to the United States commences or, if the beneficiary is an applicant for adjustment of status to that of a permanent resident, before the decision on his application becomes final:

(a) *Relative petitions.*

(1) Upon written notice of withdrawal filed by the petitioner with any officer of the Service who is authorized to grant or deny petitions.

(2) Upon the death of the petitioner or beneficiary.

(3) Upon the death of the petitioner unless the Attorney General in his discretion determines that for humanitarian reasons revocation would be inappropriate.

(4) Upon the legal termination of the relationship of husband and wife when a petition has accorded status as the spouse of a citizen or lawful resident alien, respectively, under section 201(b), or section 203(a)(2) of the Act.

(5) Upon a child beneficiary reaching the age of 21, when he has been accorded immediate relative status under section 201(b) of the Act; however, such petition is valid for the duration of the relationship to accord preference status under section 203(a)(1) of the Act if the beneficiary remains unmarried, or to accord preference status under section 203(a)(4) of the Act if he marries.

(6) Upon the marriage of a beneficiary accorded status as the child of a United States citizen under section 201(b) of the Act; however, such petition is valid for the duration of the relationship to accord preference status under section 203(a)(4) of the Act.

(7) Upon the marriage of a beneficiary accorded preference status as a son or daughter of a United States citizen under section 203(a)(1) of the Act; however, such petition is valid for the duration of the relationship to accord preference status under section 203(a)(4) of the Act.

(8) Upon the marriage of a beneficiary accorded a status as a son or daughter of a lawful resident alien under section 203(a)(2) of the Act.

(9) Upon the legal termination of the petitioner's status as an alien admitted for lawful permanent residence in the United States; unless the petitioner became a United States citizen, then § 204.5(c) of this title applies.

(b) *Petition for Pub. L. 97-359 Amerasian.* (1) Upon formal notice of withdrawal filed by the petitioner with the officer who approved the petition.

(2) Upon the death of the beneficiary.

(3) Upon the death or bankruptcy of the sponsor who executed Form I-361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Pub. L. 97-359 Amerasian. In that event, a new petition may b filed in the beneficiary's behalf with the documentary evidence relating to sponsorship and, in the case of a beneficiary under eighteen years of age, placement. If the new petition is approved, it will be given the priority date of the previously approved petition.

(4) Upon the death or substitution of the petitioner if other than the beneficiary or sponsor. However, if the petitioner dies or no longer desires or is able to proceed with the petition, and another person eighteen years of age or older, an emancipated minor, or a corporation incorporated in the United States desires to be substituted for the deceased or original petitioner, a written request may be submitted to the Service or American consular office where the petition is located to reinstate the petition and restore the original priority date.

(5) Upon the beneficiary's reaching the age of twenty-one when the beneficiary has been accorded classification under section 201(b) of the Act. Provided that all requirements of section 204(g) of the Act continue to be met, however, the petition is to be considered valid for purposes of according the beneficiary preference classification under section 203(a)(1) of the Act if the beneficiary remains unmarried or under section 203(a)(4) if the beneficiary marries.

(6) Upon the beneficiary's marriage when the beneficiary has been accorded classification under section 201(b) or section 203(a)(1) of the Act. Provided that all requirements of section 204(g) of the Act continue to be met,

however, the petition is to be considered valid for purposes of according the beneficiary preference classification under section 203(a)(4) of the Act.

(c) *Petitions under section 203(a) (3) or (6)*. (1) Upon invalidation pursuant to 20 CFR Part 656 of the labor certification in support of the petition.

(2) Upon the death of the petitioner or beneficiary.

(3) Upon written notice of withdrawal filed by the petitioner, in third preference cases, with any officer of the Service who is authorized to grant or deny petitions.

(4) Upon written notice of withdrawal filed by the petitioner, in sixth preference cases, with any officer of the Service who is authorized to grant or deny petitions.

(5) Upon termination of the employer's business in a sixth-preference case.

(d) *Notice*. When it shall appear to the district director that the approval of a petition has been automatically revoked, he shall cause a notice of such revocation to be sent promptly to the consular office having jurisdiction over the visa application and a copy of such notice to be mailed to the petitioner's last known address.

[41 FR 55849, Dec. 23, 1976, as amended at 48 FR 19156, Apr. 28, 1983; 49 FR 29567, July 23, 1984; 49 FR 30679, Aug. 1, 1984]

§ 205.2 Revocation on notice.

(a) *General*. Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 204.1 when the necessity for the revocation comes to the attention of this Service.

(b) *Procedure*. Revocation of the approval of a petition under paragraph (a) of this section will be made only on notice to the petitioner who must be given an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation of the approval. If, upon reconsideration, the approval previously granted is revoked, the district director shall notify the petitioner of the decision and of the reasons for the revocation. The petitioner may appeal the decision within fifteen days after the service of notice. Except in the case of a petition filed under section 204(g) of the Act, if the petition was approved for a preference under section 203(a) (1), (2), (4), or (5) of the Act or for immediate relative classification under section 201(b) of the Act other than for a child as defined in section 101(b)(1)(F) of the Act, the petitioner must file the appeal as provided in Part 3 of this chapter. If the petition was approved for a preference under section 203(a) (3) or (6) of the Act, for a child as defined in section 101(b)(1)(F) of the Act, or for a Pub. L. 97-359 Amerasian, the petitioner must file the appeal as provided in Part 103 of this chapter. The district director shall notify the consular officer having jurisdiction over the visa application, if applicable, of the revocation of an approval.

[48 FR 19156, Apr. 28, 1983]

PART 207—ADMISSION OF REFUGEES

Sec.

207.1 Eligibility.
207.2 Applicant processsing.
207.3 Inadmissible applicant.
207.4 Approved application.
207.5 Waiting lists and priority handling.
207.6 Control over approved refugee numbers.
207.7 Physical presence in the United States.
207.8 Termination of refugee status.

AUTHORITY: Secs. 101, 103, 201, 207, 209, and 212; (8 U.S.C. 1101, 1103, 1151, 1157, 1159, and 1182).

SOURCE: 46 FR 45118, Sept. 10, 1981, unless otherwise noted.

§ 207.1 Eligibility.

(a) *Presidential designation*. Before the beginning of each fiscal year the President determines (after appropriate consultation) the number and allocation of refugees who are of special humanitarian concern to the United States and who are to be admitted during the succeeding twelve months. Any alien who believes he/she is a "refugee" as defined in section 101(a)(42) of the Act, and is included in a refugee group of special humanitarian concern as designated by the President, may apply for admission to the United States by filing Form I-590

(Registration for Classification as Refugee) with the overseas Immigration and Naturalization Service's officer in charge responsible for the area where the applicant is located. In those areas too distant from an officer in charge, making direct filing impracticable, the Form I-590 may be filed preliminarily at a designated consular office.

(b) *Firmly resettled.* A refugee is considered to be "firmly resettled" if he/she has been offered resident status, citizenship, or some other type of permanent resettlement by a country other than the United States and has travelled to and entered that country as a consequence of his/her flight from persecution. Any applicant who has become firmly resettled in a foreign country is not eligible for refugee status under this chapter.

(c) *Not firmly resettled.* Any applicant who claims not to be firmly resettled in a foreign country must establish that the conditions of his/her residence in that country are so restrictive as to deny resettlement. In determining whether or not an applicant is firmly resettled in a foreign country, the officer reviewing the matter shall consider the conditions under which other residents of the country live: (1) Whether permanent or temporary housing is available to the refugee in the foreign country; (2) nature of employment available to the refugee in the foreign country; and (3) other benefits offered or denied to the refugee by the foreign country which are available to other residents, such as (i) right to property ownership, (ii) travel documentation, (iii) education, (iv) public welfare, and (v) citizenship.

(d) *Immediate relatives and special immigrants.* Any applicant for refugee status who qualifies as an immediate relative or as a special immigrant shall not be processed as a refugee unless it is in the public interest. The alien shall be advised to obtain an immediate relative or special immigrant visa and shall be provided with the proper petition forms to send to any prospective petitioners. An applicant who may be eligible for classification under sections 203(a)(1), (2), (3), (4), (5), (6), or (7) of the Act, and for whom a visa number is now available, shall be advised of such eligibility but is not required to apply.

(e) *Spouse and children.* The spouse of child (as defined in section 101(b)(1)(A), (B), (C), (D), or (E) of the Act) of any refugee who qualifies for admission, shall if not otherwise entitled to admission and if not a person described in the second sentence of section 101(a)(42) of the Act, be entitled to the same status as such refugee if accompanying, or following to join such refugee. His/her entry shall be charged against the numerical limitation under which the refugee's entry is charged.

§ 207.2 Applicant processing.

(a) *Forms.* Each applicant who seeks admission as a refugee shall submit an individual Form I-590 (Registration for Classification as Refugee). Additionally, each applicant 14 years old or older must submit completed forms G-325C (Biographical Information) and FD-258 (Applicant Card).

(b) *Hearing.* Each applicant 14 years old or older shall appear in person before an immigration officer for inquiry under oath to determine his/her eligibility for admission as a refugee.

(c) *Medical examination.* Each applicant shall submit to a medical examination as required by sections 221(d) and 234 of the Act.

(d) *Sponsorship.* Each applicant must be sponsored by a responsible person or organization. Transportation for the applicant from his/her present abode to the place of resettlement in the United States must be guaranteed by the sponsor. The application for refugee status will not be approved until the Service receives an acceptable sponsorship agreement and guaranty of transportation in behalf of the applicant.

§ 207.3 Inadmissible applicant.

(a) *Statutory exclusion.* An applicant within the class of aliens excluded from admission to the United States under paragraphs (27), (29), (33), or so much of paragraph (23) as it relates to trafficking in narcotics of section 212(a) of the Act, shall not be admitted as a refugee under section 207 of the Act. However, an applicant seeking refugee status under section 207 is exempt by statute from the exclusionary provisions of paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) of the Act and a waiver of exclusion is not required.

(b) *Waiver of exclusion*. Except for the exclusionary and statutory exemption provisions noted in § 207.3(a) any other exclusionary provisions of section 212(a) of the Act may be waived for humanitarian purposes, to assure family unity, or when it is in the public interest. This authority is delegated to officers in charge who shall initiate the necessary investigations to establish the facts in each waiver application pending before them. Form I-602 (Application by Refugee for Waiver of Grounds of Excludability) may be filed with the officer in charge before whom the applicant's Form I-590 is pending. The burden is upon the applicant to show that the waiver should be granted based upon: (1) Humanitarian purposes, (2) family unity, or (3) public interest. The applicant shall be notified in writing regarding the application for waiver, including the reason for denial if the application is denied. There is no appeal from a waiver denial under this chapter.

§ 207.4 Approved application.

Approval of Form I-590 by an officer in charge outside the United States authorizes the district director of the port of entry in the United States to admit the applicant conditionally as a refugee upon arrival at the port within four months of the date the Form I-590 was approved. There is no appeal from a denial of refugee status under this chapter.

§ 207.5 Waiting lists and priority of handling.

Waiting lists are maintained for each designated refugee group of special humanitarian concern. Each applicant whose application is accepted for filing by the Immigration and Naturalization Service shall be registered as of the date of filing. The date of filing is the priority date for purposes of case control. Refugees or groups of refugees may be selected from these lists in a manner that will best support the policies and interests of the United States. The Attorney General may adopt appropriate criteria for selecting the refugees and assignment of processing priorities for each designated group based upon such considerations as: Reuniting families, close association with the United States, compelling humanitarian concerns, and public interest factors.

§ 207.6 Control over approved refugee numbers.

Current numerical accounting of approved refugees is maintained for each special group designated by the President. As refugee status is authorized for each applicant, the total count is reduced correspondingly from the appropriate group so that information is readily available to indicate how many refugee numbers remain available for issuance.

§ 207.7 Physical presence in the United States.

For the purpose of adjustment of status under section 209(a)(1) of the Act, the required one year physical presence of the applicant in the United States is computed from the date the applicant entered the United States as a refugee.

§ 207.8 Termination of refugee status.

The refugee status of any alien (and of the spouse or child of the alien) admitted to the United States under section 207 of the Act shall be terminated by any district director in whose district the alien is found if the alien was not a refugee within the meaning of section 101(a)(42) of the Act at the time of admission. The district director shall notify the alien in writing of the Service's intent to terminate the alien's refugee status. The alien shall have 30 days from the date notice is served upon him/her or, delivered to his/her last known address, to present written or oral evidence to show why the alien's refugee status should not be terminated. There is no appeal under this chapter from the termination of refugee status by the district director. Upon termination of refugee status, the district director shall process the alien under sections 235, 236, and 237 of the Act.

PART 208—ASYLUM PROCEDURES

Sec.
208.1 Jurisdiction.
208.2 Application.
208.3 Filing application.
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208.16 Expulsion of former asylees.

AUTHORITY: Secs. 101, 208, 94 Stat. 105; 8 U.S.C. 1101, 1158.

SOURCE: 45 FR 37394, June 2, 1980, unless otherwise noted.

§ 208.1 Jurisdiction.

(a) Jurisdiction over any application for asylum made by an applicant for adminission at a port of entry lies with the district director having jurisdiction over that port of entry. Initial jurisdiction over any application for asylum made by an alien in the United States lies with the district director having jurisdiction over the application's place of residence.

(b) Exclusive jurisdiction over an asylum application filed but an alien who has been served a notice of referral to exclusion proceedings under § 236.3 of this chapter, or served an order to show cause under § 242.1 of this chapter, lies with the immigration judge. Except upon the motion of the district director, an immigration judge shall not remand an application or terminate a proceeding on the ground that the district director has failed to adjudicate an asylum application filed, or allegedly filed, prior to the issuance of the order to show cause or the notice to appear for exclusion proceedings. Any previously filed but unadjudicated asylum application must be resubmitted by the alien to the immigration judge.

[48 FR 5885, Feb. 9, 1983]

§ 208.2 Application.

Application for political asylum shall be made on Form I-589, "Request for Asylum in the United States." The applicant's spouse and children as defined in sections 101(b)(1) (A), (B), (C), (D) and (E) of the Act, may be included in the application. Each application shall be accompanied by a completed Form G-325A and an FD-258 fingerprint chart for every individual included in the application who is fourteen years of age or older.

§ 208.3 Filing the application.

(a) *With the district director.* The asylum application shall be filed in triplicate with the district director when the applicant:

(1) Is seeking admission to the United States, or;

(2) Is in the United States, regardless of status, and has not been served either with a notice to applicant for admission detained for hearing before an immigration judge or with an order to show cause.

(b) *With the immigration judge.* Asylum requests made after the institution of exclusion or deportation proceedings shall be filed in quadruplicate with the docket clerk of the immigration court. Such asylum requests shall also be considered as requests for withholding exclusion or deportation pursuant to section 243(h) of the Act.

[45 FR 37394, June 2, 1980, as amended at 48 FR 5885, Feb. 9, 1983]

§ 208.4 Employment authorization.

Upon the filing of a non-frivolous I-589, the district director may, in his discretion, grant a request by the applicant for employment authorization.

§ 208.5 Burden of proof.

The burden is on the asylum applicant to establish that he/she is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of the country of such person's nationality or, in the case of a person having no nationality, the country in which such person habitually resided, because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.

§ 208.6 Appearance.

The applicant shall be examined in person by an immigration officer or judge prior to adjudication of the asylum application. The personal appearance of any children included in the application may be waived by the district director or immigration judge.

§ 208.7 Advisory opinions from the Bureau of Human Rights and Humanitarian Affairs.

Upon receipt of Form I-589, the district director shall in all cases request an advisory opinion from the Bureau of Human Rights and Humanitarian Affairs (BHRHA) of the Department of State. The immigration judge shall request BHRHA advisory opinions as prescribed in § 208.10(b) of this part.

§ 208.8 Decision by the district director.

(a) *Discretion.* The district director may approve or deny the asylum application in the exercise of discretion.

(b) *Writing.* The decision of the district director shall be in writing.

(c) *Appeal.* No appeal shall lie from the decision of the district director.

(d) *Decision based on BHRHA opinion.* If the decision is based in whole or in part on a BHRHA opinion, the opinion will be made part of the record of proceeding unless it is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982). If the BHRHA opinion is included in the record, the applicant shall be given an opportunity to inspect, explain, and rebut the opinion, as provided in § 103.2(b)(2) of this chapter.

(e) *Approval.* When an I-589 is approved, asylum status shall be granted for a period of one year from the date of approval.

(1) *Annual interview of asylee.* Every asylee shall be interviewed annually to determine continuing eligibility for asylum and eligibility for adjustment of status.

(2) *Extension of asylum status.* If after the annual interview it is determined that an alien is still eligible for asylum, but does not wish or is ineligible to adjust status under any section of the Act, his/her asylum status may be extended for one year.

(f) *Denial*—(1) *General.* The district director shall deny a request for asylum or extension of asylum status if it is determined that the alien:

(i) Is not a refugee within the meaning of section 101(a)(42) of the Act;

(ii) Has been firmly resettled in a foreign country;

(iii) That the alien ordered, incited, assisted or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular group, or political opinion;

(iv) The alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

(v) There are serious reasons for considering that the alien has committed a serious non-political crime outside the United States prior to the arrival of the alien in the United States; or

(vi) There are reasonable grounds for regarding the alien as a danger to the security of the United States.

(2) *Discretion.* Among other grounds, the district director may deny a request for asylum or extension of asylum status in the exercise of discretion if it is determined that there is an outstanding offer of resettlement by a third nation where the applicant will not be subject to persecution and the applicant's resettlement in a third nation is in the public interest.

(3) *Applicant for admission.* If an asylum request by an applicant for admission is denied, he/she shall be expeditiously placed under exclusion proceedings, unless the applicant elects to withdraw the application for admission.

(4) *Applicant in the United States.* If a request for asylum or extension of asylum by an alien in the United States is denied, the district director may in his discretion, grant voluntary departure pursuant to O.I. 242.10, or commence deportation proceedings pursuant to 8 CFR 242.1.

[45 FR 37394, June 2, 1980, as amended at 48 FR 20684, May 9, 1983]

§ 208.9 Renewal of asylum request.

Where an application for asylum is denied by the district director, the applicant may renew his/her request for asylum before an immigration judge in exclusion or deportation proceedings.

§ 208.10 Asylum requests in exclusion or deportation proceedings.

(a) *Application.* A request for asylum made in exclusion or deportation proceedings shall be made on Form I-589.

(b) *BHRHA advisory opinion.* When the asylum request is filed, the hearing will be adjourned for the purpose of requesting an advisory opinion from BHRHA. The immigration judge shall not request an opinion if it has been received in connection with an application under § 208.7 of this part unless circumstances have changed so substantially since the first opinion was provided that a second referral would materially aid in adjudicating the asylum request. The BHRHA opinion, unless classified under Executive Order No. 12356, will be made part of the record, and the applicant shall be given an opportunity to inspect, explain, and rebut it.

(c) *Record and non-record evidence.* Both the applicant and the Service may present evidence for the record in the exclusion or deportation proceedings. Additionally, the Service may present non-record evidence to be considered by the immigration judge, provided the information is classified under Executive Order No. 12356. When the immigration judge receives non-record evidence, the applicant shall be informed as to whether the character of the evidence concerns political, social or other conditions in a specified country, or personally related to the applicant.

(d) *Disclosure of non-record evidence.* The immigration judge may disclose to the asylum applicant the non-record evidence, or any part thereof, to the extent that he believes he can do so and still safeguard the information and its source. The applicant shall be provided opportunity to rebut any evidence so disclosed. A decision based in whole or in part on non-record evidence shall state that such evidence is material to the decision.

(e) *Approval.* When the immigration judge grants asylum, it shall be for a period of one year.

(f) *Denial.* When the immigration judge denies asylum, the exclusion or deportation proceedings shall be reinstituted.

[45 FR 37394, June 2, 1980, as amended at 48 FR 20684, May 9, 1983]

§ 208.11 Asylum requests after completion of exclusion or deportation hearing.

An alien may request that an exclusion or deportation proceeding be reopened pursuant to 8 CFR 103.5 or 8 CFR 242.22 respectively, on the basis of a request for asylum. Such request must reasonably explain the failure to request asylum prior to the completion of the exclusion or deportation proceeding. If the alien fails to do so, the asylum claim shall be considered frivolous, absent any evidence to the contrary. Nothing in this part, however, shall be construed to prevent an alien from requesting relief under section 243(h) during exclusion or deportation proceedings.

§ 208.12 Legal liability of asylees.

A grant of asylum status in no way exempts an alien from any liability under civil or criminal proceedings by any department, bureau or agency of any Federal, State or local government.

§ 208.13 Definition of country of habitual residence.

The term "country of habitual residence" means the customary, usual, or regular place of abode.

§ 208.14 Definition of firm resettlement.

An alien is considered to be "firmly resettled" if he was offered resident status, citizenship, or some other type of permanent resettlement by another nation and travelled to and entered that nation as a consequence of his flight from persecution, unless the refugee establishes, to the satisfaction of the United States Government officer reviewing the case, that the conditions of his residence in that nation were so substantially and consciously restricted by the authority of the country of asylum/refuge that he was not in fact resettled. In making this determination, the officer shall consider, in light of the conditions under which other residents of the country live, the type of housing, whether permanent or temporary, made available to the refugee, the types and extent of employment available to the refugee, and the extent to which the refugee received permission to hold property and to enjoy other rights and privileges (such as travel documentation, education, public relief, or naturalization) available to others resident in the country.

§ 208.15 Termination of asylum status.

(a) *Ground.* (1) Changed circumstances in the asylee's country of nationality, or last habitual residence if he/she has no nationality, eliminates the need for asylum, or;

(2) The asylee poses a danger to the security of the United States, or because of conviction of a serious crime poses a danger to the community, as described in § 208.8(f)(iv) of this part, or;

(3) It appears that the alien was not in fact eligible for asylum for any reason specified in § 208.8(f).

(b) *By district director.* The district director may terminate asylum status granted under § 208.8(e). Prior to termination, the alien shall be given written notice of the intent to rescind asylum status, including the reason(s) therefor, and provided an opportunity to present evidence tending to establish that he/she is still a refugee within the meaning of section 101(a)(42), and/or does not pose a danger to either the security of the United States or the community. If it is subsequently determined, notwithstanding any evidence presented to the contrary, the alien is no longer a refugee, he/she shall be given written notice of termination of asylum status.

(c) *By immigration judge or Board of Immigration Appeals.* The immigration judge or Board of Immigration Appeals may reopen a case pursuant to § 3.2 or § 242.22 of this part for the purpose of terminating asylum status granted under § 208.10.

§ 208.16 Expulsion of former asylees.

Once an alien's asylum status is terminated as specified in § 208.15 of this part, the alien, unless eligible for other immigration benefits for which he/she makes application, shall be placed under:

(a) Deportation proceedings if he/she was in the United States at the time asylum status was granted, or;

(b) Exclusion proceedings if he/she was an applicant for admission to the United States at the time asylum status was granted.

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

Secs.
209.1 Admission for permanent residence after one year.
209.2 Adjustment of status of alien granted asylum.

AUTHORITY: Secs. 101, 103, 207, and 209; 94 Stat. 105 (8 U.S.C. 1101, 1103, and 1158.

§ 209.1 Admission for permanent residence after one year.

(a) *Eligibility.* (1) Every alien in the United States as a refugee under section 207 of this chapter whose status has not been terminated, is required to appear before an immigration officer one year after entry to determine his/her admissibility under sections 235, 236, and 237 of the Act. The applicant shall be examined under oath to determine admissibility. If the applicant is found to be admissible, he/she shall be inspected and admitted for lawful permanent residence as of the date of the alien's arrival in the United States. If the applicant is determined to be inadmissible, he/she shall be informed that he/she may renew the request for admission to the United States as an immigrant in exclusion proceedings under section 236 of the Act. The provisions of this section shall provide the sole and exclusive procedure for adjustment of status by a refugee admitted under section 207 of the Act, whose application is based on his/her refugee status.

(2) Every alien processed by the Immigration and Naturalization Service abroad and paroled into the United States as a refugee after April 1, 1980, and before May 18, 1980 shall be considered as having entered the United

States as a refugee under section 207(a) of the Act.

(b) *Processing Application.* One year after arrival in the United States, every refugee entrant shall be notified to appear for examination before an immigration officer. Each applicant shall be examined under oath to determine eligibility for permanent residence. If the refugee entrant has been physically present in the United States for at least one year, forms FD-258 (Applicant Card) and G-325A (Biographical Information) will be processed. Unless there were medical grounds for exclusion at the time of arrival, a United States Public Health Service medical examination is not required. If the alien is found admissible after inspection under section 209(a) of the Act, he/she shall be processed for issuance of Form I-551 (Alien Registration Receipt Card).

[46 FR 45119, Sept. 10, 1981]

§ 209.2 Adjustment of status of alien granted asylum.

(a) *Eligibility.* The status of any alien who has been granted asylum in the United States may be adjusted by the district director to that of an alien lawfully admitted for permanent residence, provided the alien: (1) Applies for such adjustment; (2) has been physically present in the United States for at least one year after having been granted asylum; (3) continues to be a refugee within the meaning of section 101(a)(42) of the Act, or the spouse or child of a refugee; (4) has not been firmly resettled in any foreign country; (5) is admissible to the United States as an immigrant under the Act at the time of examination for adjustment without regard to paragraphs (14), (15), (20), (21), (25), and (32) of section 212(a) of the Act, and; (6) has a refugee number available under section 207(a) of the Act. If the application for adjustment filed under this part exceeds the refugee numbers available under Section 207(a) of the Act for the fiscal year, a waiting list will be established on a priority basis by the date the application was properly filed. The provisions of this section shall provide the sole and exlusive procedure for adjustment of status by an asylee admitted under section 208 of the Act whose application is based on his/her asylee status.

(b) *Inadmissible Alien.* An applicant who is inadmissible to the United States under section 212(a) of the Act, may, under section 209(c) of the Act, have the grounds of inadmissibility waived by the district director (except for those grounds under paragraphs (27), (29), (33), and so much of (23) as relates to trafficking in narcotics) for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. An application for the waiver may be filed on Form I-602 (Application by Refugee for Waiver of Grounds of Excludability) with the application for adjustment. An applicant for adjustment who has had the status of an exchange alien nonimmigrant under section 101(a)(15)(J) of the Act, and who became subject to the foreign resident requirement of section 212(e) of the Act, shall be eligible for adjustment without regard to the foreign residence requirement.

(c) *Application.* An application without fee for the benefits of section 209(b) of the Act may be filed on Form I-485 (Application for Status as Permanent Resident) with the district director having jurisdiction over the applicant's place of residence. A separate application must be filed by each alien, and if the alien is 14 years or older it must be accompanied by a completed Form G-325A (Biographical Information) and Form FD-258 (Applicant Card). The application must be supported by evidence that the applicant has been granted asylum and has thereafter been physically present in the United States for at least one year. After an alien has been served with an order to show cause or placed under exclusion proceedings, the application can be filed and considered only in proceedings under Section 242 or 236 of the Act.

(d) *Medical Examination.* Upon acceptance of the application, the applicant shall submit to an examination by a selected civil surgeon as required by section 221(d) and 234 of the Act. The report setting forth the findings of the mental and physical condition of the applicant shall be incorporated into the record.

(e) *Interview.* Each applicant for adjustment of status under this part shall be interviewed by an immigration officer. The interview may be waived for a child under 14 years of age.

(f) *Decision.* The applicant shall be notified of the decision, and if the application is denied, of the reasons for denial. No appeal shall lie from the denial of an application by the district director but such denial will be without prejudice to the alien's right to renew the application in proceedings under Parts 242 and 236 of this chapter. If the application is approved, the district director shall record the alien's admission for lawful permanent residence as of the date one year before the date of the approval of the application.

[46 FR 45119, Sept. 10, 1981]

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

Sec.
211.1 Visas.
211.2 Passports.
211.3 Expiration of immigrant visas, reentry permits, refugee travel document, and Form I-151 or I-551.
211.4 Recording the entry of certain immigrant children admitted without immigrant visas.
211.5 Alien commuters.

AUTHORITY: Secs. 101, 103, 211, 212, 223, 235, 247, 66 Stat. 166, as amended, 173, 181, 182, as amended, 194, 198, 218; 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257.

§ 211.1 Visas.

(a) *General.* A valid unexpired immigrant visa shall be presented by each arriving immigrant alien applying for admission to the United States for lawful permanent residence, except as immigrant alien who: (1) Is a child born subsequent to the issuance of an immigrant visa to his accompanying parent and applies for admission during the validity of such a visa; or (2) is a child born during the temporary visit abroad of a mother who is a lawful permanent resident alien, or a national, of the United States, provided the child's application for admission to the United States is made within 2 years of his birth, the child is accompanied by his parent who is applying for readmission as a permanent resident upon the first return of the parent to the United States after the birth of the child, and the accompanying parent is found to be admissible to the United States.

(b) *Returning residents*—(1) *Alien Registration Receipt Card (Form I-151 or I-551).* An Alien Registration Card may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad, and who is: (i) Returning after a temporary absence abroad not exceeding one year; or (ii) an alien crewman regularly serving aboard an aircraft or vessel of American registry who is returning after a temporary absence abroad in connection with his/her duties in that occupation pursuant to his/her employment as a crewman; (iii) a civilian employee of the U.S. Government returning from a foreign assignment pursuant to official orders; or (iv) a spouse or child of a civilian employee of the U.S. Government or a spouse or child of a member of the Armed Forces of the U.S., provided such spouse or child resided abroad while such member of the Armed Forces or such civilian employee was on overseas duty and is preceding or accompanying the member or employee or is following to join the member or employee within four months of the member's or employee's return to the U.S.

(2) *Reentry permit.* Any immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad may present a valid unexpired reentry permit duly issued to him/her in lieu of an immigrant visa. A refugee travel document issued to a lawful permanent resident pursuant to Part 223a of this chapter shall be regarded as a reentry permit.

(3) *Waiver of visas.* An immigrant alien returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad who satisfies the district director in charge of the port of entry that there is good cause for his failure

to present an immigrant visa, Form I-151 or I-551, or reentry permit may, upon application on Form I-193, be granted a waiver of that requirement. If the returning resident alien is not presenting Form I-151 or I-551 because he has lost it, a Form I-90, (application for a replacement Form I-151) in duplicate, may be filed with the district director having jurisdiction over the port of entry who may in his discretion grant or deny without appeal a waiver of the required immigrant visa, reentry permit or Form I-151, by an immigrant alien who is returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad not exceeding one year; filing the I-90 will serve not only as an application for replacement but also as an application for waiver of passport and visa without the necessity of a separate filing of Form I-193. An alien who is granted a waiver under this part upon presentation of Form I-90 shall, after admission into the United States, comply with the requirements of § 264.1(c) of this chapter.

(4) *Private Law 98-53.* A lawful permanent resident alien who immediately preceding travel to the United States was employed by the American University of Beirut, and seeks admission either to remain temporarily in the United States and then resume employment with the American University of Beirut, or to resume permanent residence in the United States may present Form I-151/551, Alien Registration Receipt Card, or a boarding letter issued by a United States consular or immigration officer in lieu of an immigrant visa.

(c) *Immigrants having occupational status defined in section 101(a)(15)(A), (E), or (G) of the Act.* An immigrant visa, reentry permit, or Form I-151 or I-551 shall be invalid when presented by an alien who has an occupational status under section 101(a)(15)(A), (E), or (G) of the Act, unless he has previously submitted, or submits at the time he applies for admission to the United States, the written waiver required by section 247(b) of the Act and Part 247 of this chapter.

[31 FR 13387, Oct. 15, 1966, as amended at 42 FR 19478, Apr. 14, 1977; 45 FR 30062, 30063, May 7, 1980; 45 FR 32657, May 19, 1980; 46 FR 25597, May 8, 1981; 46 FR 37240, July 20, 1981; 50 FR 49921, Dec. 6, 1985]

§ 211.2 Passports.

A passport valid for the bearer's entry into a foreign country at least 60 days beyond the expiration date of this immigrant visa shall be presented by each immigrant except an immigrant who: (a) Is the parent, spouse, or unmarried son or daughter of a United States citizen or of an alien lawful permanent resident of the United States, or (b) is a child born during the temporary visit abroad of a mother who is a lawful permanent resident alien, or a national, of the United States, provided the child's application for admission to the United States is made within two years of his birth, the child is accompanied by his parent who is applying for readmission as a permanent resident upon the first return of the parent to the United States after the birth of the child, and the accompanying parent is found to be admissible to the United States, or (c) is returning to an unrelinquished lawful permanent residence in the United States after a temporary absence abroad, or (d) is a stateless person or a person who because of his opposition to Communism is unwilling or unable to obtain a passport from the country of his nationality or is the accompanying spouse or unmarried son or daughter of such immigrant, or (e) is a third-preference immigrant, or (f) is a member of the Armed Forces of the United States, or (g) satisfies the district director in charge of the port of entry that there is good cause for failure to present the required document, in which case an application for waiver shall be made on Form I-193.

[29 FR 10578, July 30, 1964, as amended at 30 FR 14776, Nov. 30, 1965]

§ 211.3 Expiration of immigrant visas, reentry permits, refugee travel document, and Form I-151 or I-551.

An immigrant visa, reentry permit, refugee travel document, or Form I-151 or I-551 shall be regarded as unexpired if the rightful holder embarked or enplaned before the expiration of his immigrant visa, reentry permit, or refugee travel document, or, with respect to Form I-151 or I-551, before the first anniversary of the date on which he departed from the United States: *Provided*, That the vessel or aircraft on which he so embarked or enplaned arrives in the United States or foreign contiguous territory on a continuous voyage. The continuity of the voyage shall not be deemed to have been interrupted by scheduled or emergency stops of the vessel or aircraft en route to the United States or foreign contiguous territory, or by a layover in foreign contiguous territory necessitated solely for the purpose of effecting a transportation connection to the United States.

[29 FR 10578, July 30, 1964, as amended at 38 FR 8238, Mar. 30, 1973; 45 FR 32657, May 19, 1980]

§ 211.4 Recording the entry of certain immigrant children admitted without immigrant visas.

When an immigrant alien who: (a) Is a child born subsequent to the issuance of an immigrant visa to his accompanying parent; or (b) is a child born during the temporary visit abroad of a mother who is a lawful permanent resident, or a national, of the United States, is admitted to the United States for lawful permanent residence without an immigrant visa, the admission shall be recorded on Form I-181.

[32 FR 9625, July 4, 1967. Redesignated at 41 FR 55849, Dec. 23, 1976]

§ 211.5 Alien commuters.

(a) *General*. Notwithstanding any other provision of this part, an alien lawfully admitted for permanent residence may commence or continue to reside in foreign contiguous territory and commute as a special immigrant defined in section 101(a)(27)(A) of the Act to his place of employment in the United States to engage in daily or seasonal work which, on the whole, is regular and stable: *Provided*, That at the time of each reentry he presents a valid Form I-151 or I-551 in lieu of an immigrant visa and passport. An alien commuter engaged in seasonal work would be presumed to have taken up residence in the United States if he is present in this country for more than six months, in the aggregate, during any continuous 12-month period. An alien commuter's address report under section 265 of the Act must show his actual residence address even though it is not in the United States.

(b) *Loss of commuter status*. An alien commuter who has been out of regular employment in the United States for a continuous period of six months shall be deemed to have lost his status as an alien lawfully admitted for permanent residence, notwithstanding temporary entries in the interim for other than employment purposes, unless his employment in the United States was interrupted for reasons beyond his control other than lack of a job opportunity. Upon loss of status, Form I-151 or I-551 shall become invalid and shall be surrendered to an immigration officer.

(c) *Eligibility for benefits under the immigration and nationality laws*. Until he has taken up residence in the United States, an alien commuter cannot satisfy the residence requirements of the naturalization laws and cannot qualify for any benefits under the immigration laws on his own behalf or on behalf of his relatives other than as specified in paragraph (a) of this section. When an alien commuter takes up residence in the United States, he shall no longer be regarded as a commuter. He may facilitate proof of having taken up such residence by notifying the Service as soon as possible, preferably at the time of his first reentry for that purpose. Application for issuance of a new alien registration receipt card to show that he has taken up residence in the United States shall be made on Form I-90.

[40 FR 34106, Aug. 14, 1975. Redesignated and amended at 41 FR 55849, Dec. 23, 1976; 45 FR 32657, May 19, 1980; 46 FR 4858, Jan. 19, 1981]

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

Sec.

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AUTHORITY: Secs. 101, 103, 212, 214, 235, 236, 238, 242, 66 Stat. 166, 173, 182, as amended, 189, 198, 200, 202, 208, as amended, 8 U.S.C. 1101, 1103, 1182, 1184, 1225, 1226, 1228, 1252, 1182b, 1182c, unless otherwise noted.

§ 212.1 Documentary requirements for non-immigrants.

A valid unexpired visa and an unexpired passport, valid for the period set forth in section 212(a)(26) of the Act, shall be presented by each arriving nonimmigrant alien except that the passport validity period for an applicant for admission who is a member of a class described in section 102 of the Act is not required to extend beyond the date of his application for admission if so admitted, and except as otherwise provided in the Act, this chapter, and for the following classes:

(a) *Canadian nationals, and aliens having a common nationality with nationals of Canada or with British subjects in Bermuda, Bahamian nationals or British subjects resident in Bahamas, Cayman Islands, and Turks and Caicos Islands.* A visa is not required of a Canadian national in any case. A passport is not required of such national except after a visit outside of the Western Hemisphere. A visa is not required of an alien having a common nationality with Canadian nationals or with British subjects in Bermuda, who has his or her residence in Canada or Bermuda. A passport is not required of such alien except after a visit outside of the Western Hemisphere. A visa and a passport are required of a Bahamian national or a British subject who has his residence in the Bahamas except that a visa is not required of such an alien who, prior to or at the time of embarkation for the United States on a vessel or aircraft, satisfied the examining U.S. immigration officer at the Bahamas, that he is clearly and beyond a doubt entitled to admission in all other respects. A visa is not required of a British subject who has his residence in, and arrives directly from, the Cayman Islands or the Turks and Caicos Islands and who presents a current certificate from the Clerk of Court of the Cayman Islands or the Turks and Caicos Islands indicating no criminal record.

(b) *British, French, and Netherlands nationals, and nationals of certain adjacent islands of the Caribbean which are independent countries.* A visa is not required of a British, French, or Netherlands national—or of a national of Barbados, Grenada, Jamaica, or Trinidad and Tobago, who has his residence in British, French, or Netherlands territory located in the adjacent islands of the Caribbean area, or in Barbados, Grenada, Jamaica, or Trinidad and Tobago, who: (1) Is proceeding to the United States as an agricultural worker; or (2) is the beneficiary of a valid, unexpired indefinite certification granted by the Department of Labor for employment in the Virgin Islands of the United States and is proceeding to the Virgin Islands of the United States for such purpose, or is the spouse or child of such an alien accompanying or following to join him. A visa is not required of a national of the British Virgin Islands who has his residence in the British Virgin Islands, and who is proceeding to the Virgin Islands of the United States.

(c) *Mexican nationals.* A visa and a passport are not required of a Mexican national who is in possession of a border crossing card on Form I-186 or I-586 and is applying for admission as a temporary visitor for business or pleasure from continguous territory; or is entering solely for the purpose of applying for a Mexican passport or other official Mexican document at a Mexican consular office on the United States side of the border. A visa is not required of a Mexican national who is in possession of a border crossing card and is applying for admission to the United States as a temporary visitor for business or pleasure from other than contiguous territory. A visa is not required of a Mexican national who is a crewman employed on an aircraft belonging to a Mexican company authorized to engage in commercial transportation into the United States.

(c-1) *Bearers of Mexican diplomatic or official passports.* A visa shall not be required by a Mexican national bearing a Mexican diplomatic or official passport who is a military or civilian official of the Federal Government of Mexico entering the United States for six months or less for a purpose other than on assignment as a permanent employee to an office of the Mexican Federal Government in the United States and the official's spouse or any of the official's dependent family members under 19 years of age, bearing diplomatic or official passports, who are in the actual company of such official at the time of entry into the United States. This waiver does not apply to the spouse or any of the official's family members classifiable under section 101(a)(15) (F) or (M) of the Act.

(c-2) *Aliens entering pursuant to International Boundary and Water Commission Treaty.* A visa and a passport are not required of an alien employed either directly or indirectly on the construction, operation, or maintenance of works in the United States undertaken in accordance with the treaty concluded on February 3, 1944, between, the United States and Mexico regarding the functions of the International Boundary and Water Commission, and entering the United States temporarily in connection with such employment.

(d) *Natives and residents of the Trust Territory of the Pacific Islands.* A visa and a passport are not required of a native and resident of the Trust Territory of the Pacific Islands who has proceeded in direct and continuous transit from the Trust Territory to the United States.

(e) *Direct transits*—(1) *Transit without visa.* A passport and visa are not required of an alien who is being transported in immediate and continuous transit through the United States in accordance with the terms of an agreement entered into between the transportation line and the Service under the provisions of section 238(d) of the Act on Form I-426 to insure such immediate and continuous transit through, and departure from, the United States en route to a specifically designated foreign country: *Provided,* That such alien is in possession of a travel document or documents establishing his/her identity and nationality and ability to enter some country other than the United States.

(2) *Waiver of passport and visa.* On the basis of reciprocity, the waiver of passport and visa is available to a national of Albania, Bulgaria, Czechoslovakia, Estonia, the German Democratic Republic, Hungary, Latvia, Lithuania, Mongolian People's Republic, People's Republic of China, Poland, Romania, or the Union of Soviet Socialist Republics resident in one of said countries, only if he/she is transiting the United States by aircraft of a transportation line signatory to an agreement with the Service on Form I-426 on a direct through flight which will depart directly to a foreign place from the port of arrival.

(3) *Unavailability to transit.* This waiver of passport and visa requirement is not available to an alien who is a citizen of Afghanistan, Bangladesh, Cuba, India, Iran, Iraq, Pakistan or Sri Lanka. This waiver of passport and visa requirement is not available to an alien who is a citizen or national of North Korea (Democratic People's Republic of Korea) or Democratic Republic of Vietnam and is a resident of the said countries.

(4) *Foreign government officials in transit.* If an alien is of the class described in section 212(d)(8) of the Act, only a valid unexpired visa and a travel document valid for entry into a foreign country for at least 30 days

from the date of admission to the United States are required.

(f) *Unforeseen emergency.* A visa and a passport are not required of a nonimmigrant who, either prior to his embarkation at a foreign port or place or at the time of arrival at a port of entry in the United States, satisfies the district director at the port of entry (after consultation with and concurrence by the Director of the Visa Office of the Department of State) that, because of an unforeseen emergency, he was unable to obtain the required documents, in which case a waiver application shall be made on Form I-193. The district director or the Deputy Commissioner may at any time revoke a waiver previously authorized pursuant to this paragraph and notify the nonimmigrant in writing to that effect. Any waiver of the visa requirement heretofore or hereafter granted pursuant to section 212(d)(4)(A) of the Act in the case of a national or resident of Cuba who embarks for the United States on or after November 16, 1963, shall not be valid unless such national or resident proceeds directly from Cuba to the United States and has been inspected in Cuba by officials of the United States Immigration and Naturalization Service and of the United States Public Health Service immediately prior to his departure for the United States, irrespective of whether such national or resident had prior notice of these conditions.

(g) *Fiancees or fiances of U.S. citizens.* Notwithstanding any of the provisions of this part, an alien seeking admission as a fiancee or fiance of a U.S. citizen pursuant to section 101(a)(15)(K) of the Act shall be in possession of a nonimmigrant visa issued by an American consular officer classifying the alien under that section.

(h) [Reserved]

(i) *Officers authorized to act upon recommendations of United States consular officers for waiver of visa and passport requirements.* All district directors, the officers in charge are authorized to act upon recommendations made by United States consular officers or by officers of the Visa Office, Department of State, pursuant to the provisions of 22 CFR 41.7 for waiver of visa and passport requirements under the provisions of section 212(d)(4)(A) of the Act. The District Director at Washington, D.C., has jurisdiction in such cases recommended to the Service at the seat of Government level by the Department of State. Neither an application nor fee are required if the concurrence in a passport or visa waiver is requested by a U.S. consular officer or by an officer of the Visa Office. The district director or the Deputy Commissioner, may at any time revoke a waiver previously authorized pursuant to this paragraph and notify the nonimmigrant alien in writing to that effect.

(j) *Cancellation of nonimmigrant visas by immigration officers.* Upon receipt of advice from the Department of State that a nonimmigrant visa has been revoked or invalidated, and request by that Department for such action, immigration officers shall place an appropriate endorsement thereon.

(Secs. 103, 104, 212 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1104, 1132))

[26 FR 12066, Dec. 16, 1961]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 212.1, see the List of CFR Sections Affected in the Finding Aids section in this volume.

EFFECTIVE DATE NOTE: At 50 FR 41315, Oct. 9, 1985, § 212.1(e) was revised, effective November 8, 1985. At 50 FR 47035, Nov. 14, 1985, the effective date was suspended until January 7, 1986. For the convenience of the user, the superseded text appears below:

§ 212.1 Documentary requirements for non-immigrants.

• • • • •

(e) *Direct transits—*(1) *Transit without visa.* A passport and visa are not required of an alien who is being transported in immediate and continuous transit through the United States in accordance with the terms of an agreement entered into between the transportation line and the Service under the provisions of section 238(d) of the Act on Form I-426 to insure such immediate and continuous transit through, and departure from, the United States en route to a specifically designated foreign country: *Provided,* That such alien is in possession of a travel document or documents establishing his/her identity and nationality and ability to enter some country other than the United States.

(2) *Waiver of passport and visa.* On the basis of reciprocity, the waiver of passport and visa is available to a national of Albania, Bulgaria, Czechoslovakia, Estonia, the German Democratic Republic, Hungary, Latvia, Lithuania, Mongolian People's Republic, People's Republic of China, Poland, Romania, or the Union of Soviet Socialist Republics resident in one of said countries, only if he/she is transiting the United States by aircraft of a transportation line signatory to an agreement with the Service on Form I-426 on a direct through flight which will depart directly to a foreign place from the port of arrival.

(3) *Unavailability to transit.* This waiver of passport and visa requirement is not available to an alien who is a citizen or national of Afghanistan, Cuba, Iraq, or Iran. This waiver of passport and visa requirement is not available to an alien who is a citizen or national of North Korea ("Democratic People's Republic of Korea") or Democratic Republic of Vietnam and is a resident of one of the said countries.

(4) *Foreign government officials in transit.* If an alien is of the class described in section 212(d)(8) of the Act only a valid unexpired visa and a travel document valid for entry into a foreign country for at least 30 days from the date of admission to the United States are required.

* * * * *

§ 212.2 Consent to reapply for admission after deportation, removal or departure at Government expense.

(a) *Evidence.* Any alien who has been deported or removed from the United States, who is applying for a visa, admission to the United States, or adjustment of status, must present proof to the satisfaction of the consular or immigration officer that the alien has remained outside the United States for more than five successive years following the last deportation or removal. Any alien who does not present proof of more than five successive years' absence from the United States which is satisfactory to the consular or immigration officer, or who has not remained outside the United States for the requisite period, must apply for permission to reapply as provided under this part. A temporary stay in the United States with the approval of the Attorney General, under section 212(d)(3) of the Act, does not interrupt the five-year absence requirement.

(b) *Alien applying to consular officer for nonimmigrant visa or nonresident border crossing card.* Permission to reapply for admission to the United States after deportation or removal, within five years of the date of such deportation or removal for an alien who is applying or will apply to a consular officer for nonimmigrant visa or nonresident border crossing card, shall be requested through the consular officer and may be granted only in accordance with section 212 (a)(17) and (d)(3)(A) of the Act and § 212.4 of this part. However, the alien may apply for such permission on Form I-212 submitted to the consular officer, if the consular officer is willing to accept such application and if that officer, in forwarding Form I-212 for decision to the district director having jurisdiction over the place where the deportation or removal proceedings were held, recommends to the district director that the alien be permitted to apply on Form I-212.

(c) *Applicant for nonimmigrant visa under section 101(a)(15)(K) of the Act.* Notwithstanding the provisions of paragraph (b) of this section, any applicant for a nonimmigrant visa under section 101(a)(15)(K) of the Act who is the beneficiary of a valid visa petition approved by the Service under that section may apply for permission to reapply for admission to the United States after deportation or removal by submitting Form I-212 to the consular officer. The consular officer shall forward the Form I-212 to the Service officer having jurisdiction over the area within which the consular officer is located. If the alien is ineligible on grounds which may be waived under section 212 (g), (h), or (i) of the Act upon the applicant's marriage to the United States citizen petitioner, the consular officer shall also forward a recommendation whether the waiver should be granted.

(d) *Applicant for immigrant visa.* Any applicant for an immigrant visa who is not physically present in the United States, and who requires permission to reapply, may file Form I-212 with the district director having jurisdiction over the place where the deportation or removal proceedings were held. If the applicant also requires a waiver under section 212 (g), (h), or (i) of the Act, a Form I-601 must be filed simultaneously with the American consul having jurisdiction over the alien's place of residence. The consul shall forward the applications to the appropriate Service officer abroad who has jurisdiction over the area within which the consul is located.

(e) *Applicant for adjustment of status.* Any applicant for adjustment of status under section 245 of the Act and Part 245 of this chapter who requires permission to reapply in conjunction with an application for adjustment of status must file an application for permission to reapply, Form I-212, with the district director having jurisdiction over the place where the alien resides. If the application under section 245 of the Act has been initiated, renewed, or is pending in a proceeding before an immigration judge, the district director shall refer the Form I-212 to the immigration judge for adjudication.

(f) *Applicant for admission at port of entry.* Any alien may request permission to reapply for admission to the United States within five years of the date of deportation or removal by filing with the district director having jurisdiction over the port or entry Form I-192 (if the alien is seeking temporary admission) or Form I-212 (if the alien is seeking lawful admission for permanent residence). However, the district director may authorize an alien seeking temporary admission at a port of entry to apply on Form I-212 for permission to reapply after deportation or removal.

(g) *Other applicants.* Any applicant for permission to reapply for admission under circumstances other than those described in paragraphs (b) through (f) of this section shall file Form I-212 with the district director having jurisdiction over the place where the deportation or removal proceedings were held, or with the district director who exercised or is exercising jurisdiction over the most recent proceeding relating to the applicant. If the applicant is physically present in the United States but is ineligible to apply for adjustment of status, the application must be filed with the district director having jurisdiction over the alien's place of residence.

(h) *Decision.* An applicant who has submitted Form I-212 shall be notified of the decision and, if the application is denied, of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter. Denial of the application, except in the case of an applicant seeking to be granted advance permission to reapply for admission prior to his departure from the United States, shall be without prejudice to the renewal of the application in the course of proceedings before a special inquiry officer under section 242 of the Act and this chapter.

(i) *Retroactive approval.* The approval of a Form I-212 application filed by an alien seeking admission to the United States at a port of entry, or by an alien in conjunction with an application for adjustment of status under section 245 of the Act, shall be considered as retroactive to the date on which the alien embarked or reembarked at a place outside the United States or attempted to be admitted from foreign contiguous territory.

(j) *Advance approval.* The approval of an application filed by an alien whose departure will execute an order of deportation shall be conditioned upon his departure from the United States; otherwise, the approval shall not be conditioned or limited. However, the grant of permission to reapply does not waive inadmissibility under section 212(a) (16) or (17) of the Act resulting from exclusion, deportation, or removal proceedings which are instituted subsequent to the date permission to reapply is granted.

[36 FR 11635, June 17, 1971, as amended at 47 FR 12131, Mar. 22, 1982; 47 FR 44234, Oct. 7, 1982]

§ 212.3 Application for the exercise of discretion under section 212(c).

An application for the exercise of discretion under section 212(c) of the act shall be submitted on Form I-191 to the district director in charge of the area in which the applicant's intended or actual place of residence in the

United States is located prior to, at the time of, or at any time subsequent to the applicant's arrival in the United States. The applicant shall be notified of the decision and if the application is denied of the reason therefor and of his right to appeal to the Board within 15 days after the mailing of the notification of decision in accordance with the provisions of Part 3 of this chapter. If denied, the denial shall be without prejudice to renewal of the application in the course of proceedings before a special inquiry officer under sections 235, 236, and 242 of the act and this chapter. An application for the exercise of discretion under section 212(c) of the Act may be submitted by the applicant to a special inquiry officer in the course of proceedings before him under sections 235, 236, and 242 of the Act and this chapter, and shall be adjudicated by the special inquiry officer in such proceedings, regardless of whether the applicant has made such application previously to the district director. When an appeal may not be taken from a decision of a special inquiry officer excluding an alien, but the alien has applied for the exercise of discretion under section 212(c) of the act, the alien may appeal to the Board from a denial of such application in accordance with the provisions of § 236.5(b) of this chapter.

[23 FR 141, Jan. 8, 1958, as amended at 23 FR 2670, Apr. 23, 1958; 23 FR 9122, Nov. 26, 1958; 30 FR 14526, Nov. 20, 1965]

§ 212.4 Applications for the exercise of discretion under section 212(d)(3).

(a) *Applications under section 212(d)(3)(A).* District directors in the United States and officers in charge outside the United States in Hong Kong, B.C.C.; Frankfurt, Germany; Mexico, D.F., Mexico; and Rome, Italy, districts are authorized to act upon recommendations made by consular officers for the exercise of discretion under section 212(d)(3)(A) of the Act. The District Director, Washington, D.C., has jurisdiction in such cases recommended to the Service at the seat-of-government level by the Department of State. When a consular officer or other State Department official recommends that the benefits of section 212(d)(3)(A) of the Act be accorded an alien, neither an application nor fees shall be required. The recommendation shall specify:

(1) The reasons for inadmissibility and each section of law under which the alien is inadmissible;

(2) Each intended date of arrival;

(3) The length of each proposed stay in the United States;

(4) The purpose of each stay;

(5) The number of entries which the alien intends to make, and

(6) The justification for exercising the authority contained in section 212(d)(3) of the Act. If the alien desires to make multiple entries and the consular officer or other State Department official believes that the circumstances justify the issuance of a visa valid for multiple entries rather than for a specified number of entries, and recommends that the alien be accorded an authorization valid for multiple entries, the information required by items (2) and (3) shall be furnished only with respect to the initial entry. Item (2) does not apply to a bona fide crewman. The consular officer or other State Department official shall be notified of the decision on his recommendation. No appeal by the alien shall lie from an adverse decision made by a Service officer on the recommendation of a consular officer or other State Department official.

(b) *Applications under section 212(d)(3)(B).* An application for the exercise of discretion under section 212(d)(3)(B) of the Act shall be submitted on Form I-192 to the district director in charge of the applicant's intended port of entry prior to the applicant's arrival in the United States. (For Department of State procedure when a visa is required, see 22 CFR 41.95 and paragraph (a) of this section.) If the application is made because the applicant may be inadmissible due to present or past membership in or affiliation with any Communist or other totalitarian party or organization, there shall be attached to the application a written statement of the history of the applicant's membership or affiliation, including the period of such membership or affiliation, whether the applicant held any office in the organization, and whether his membership or affiliation was voluntary or involuntary. If the applicant alleges that his membership or affiliation was involuntary, the statement shall include the basis for that allegation. When the application is made because the applicant may be inadmissible due to disease, mental or physical defect, or disability of any kind, the application shall describe the disease, defect, or disability. If the purpose of seeking admission to the United States is for treatment, there shall be attached to the application statements in writing to establish that satisfactory treatment cannot be obtained outside the United States; that arrangements have been completed for treatment, and where and from whom treatment will be received; what financial arrangements for payment of expenses incurred in connection with the treatment have been made, and that a bond will be available if required. When the application is made because the applicant may be inadmissible due to the conviction of one or more crimes, the designation of each crime, the date and place of its commission and of the conviction thereof, and the sentence or other judgment of the court shall be stated in the application; in such a case the application shall be supplemented by the official record of each conviction, and any other documents relating to commutation of sentence, parole, probation, or pardon. If the application is made at the time of the applicant's arrival to the district director at a port of entry, the applicant shall establish that he was not aware of the ground of inadmissibility and that it could not have been ascertained by the exercise of reasonable diligence, and he shall be in possession of a passport and visa, if required, or have been granted a waiver thereof. The applicant shall be notified of the decision and if the application is denied of the reasons therefor and of his right to appeal to the Board within 15 days after the mailing of the notification of decision in accordance with the Provisions of Part 3 of this chapter. If denied, the denial shall be without prejudice to renewal of the application in the course of proceedings before a special inquiry officer under sections 235 and 236 of the Act and this chapter. When an appeal may not be taken from a decision of a special inquiry officer excluding an alien but the alien has applied for the exercise of discretion under section 212(d)(3)(B) of the Act, the alien may appeal to the Board from a denial of such application in accordance with the provisions of § 236.5(b) of this chapter.

(c) *Terms of authorization*. Each authorization under section 212(d)(3) (A) or (B) of the Act shall specify:

(1) Each section of law under which the alien is inadmissible;

(2) The intended date of each arrival;

(3) The length of each stay authorized in the United States;

(4) The purpose of each stay;

(5) The number of entries for which the authorization is valid;

(6) The dates on or between which each application for admission at ports of entry in the United States is valid; and

(7) The justification for exercising the authority contained in section 212(d)(3) of the Act. If the consular officer has recommended under section 212(d)(3)(A), or an applicant under section 212(d)(3)(B) seeks, the issuance of an authorization valid for multiple entries rather than for a specified number of entries, and it is determined that the circumstances justify the issuance of the authorization valid for mutiple entries, the information required by items (2) and (3) shall be specified only with respect to the initial entry. Item (2) does not apply to a bona fide crewman. Authorizations granted to crewmen may be valid for a maximum period of 2 years for application for admission at U.S. ports of entry and may be valid for multiple entries. An authorization issued in conjunction with an application for a nonresident alien border crossing card shall be valid for a period not to exceed the validity of such card for applications for admission at U.S. ports of entry and shall be valid for multiple entries. A multiple entry authorization for a person other than a crewman or applicant for a border crossing card may be made valid for a maximum period of 1 year for applications for admission at U.S.

ports of entry, except that a period in excess of 1 year may be permitted on the recommendation of the Department of State. A single entry authorization to apply for admission at a U.S. port of entry shall not be valid for more than 6 months from the date the authorization is issued. All admissions pursuant to section 212(d)(3) of the Act shall be subject to the terms and conditions set forth in the authorization. The period for which the alien's admission is authorized pursuant to item (3) shall not exceed the period justified, subject to the limitations specified in Part 214 of this chapter for each class of nonimmigrants. Each authorization shall specify that it is subject to revocation at any time. Unless the alien applies for admission during the period of validity of the authorization, a new authorization is required. An authorization may not be revalidated.

(d) *Admission of groups inadmissible under section 212(a)(28) for attendance at international conferences.* When the Secretary of State recommends that a group of nonimmigrant aliens and their accompanying family members be admitted to attend international conferences notwithstanding their inadmissibility under section 212(a)(28) of the Act, the Deputy Commissioner, may enter an order pursuant to the authority contained in section 212(d)(3)(A) of the Act specifying the terms and conditions of their admission and stay.

(e) *Inadmissibility under section 212(a)(1) or 212(a)(24).* Pursuant to the authority contained in section 212(d)(3) of the Act, the temporary admission as a nonimmigrant visitor of a Canadian national or an alien resident of Canada having a common nationality with Canadians, who is not required to present a visa and passport pursuant to § 212.1(a), is authorized notwithstanding inadmissibility under section 212(a)(1) of the Act, if such national or alien resident is accompanied by a member of his family or a guardian who will be responsible for him during his visit; in addition, the temporary admission of any nonimmigrant inadmissible solely under section 212(a)(24) of the Act is authorized.

(f) *Action upon alien's arrival.* Upon admitting an alien who has been granted the benefits of section 212(d)(3)(A) of the Act, the immigration officer shall be guided by the conditions and limitations imposed in the authorization and noted by the consular officer in the alien's passport. When admitting any alien who has been granted the benefits of section 212(d)(3)(B) of the Act, the Immigration officer shall note on the arrival-departure record, Form I-94, or crewman's landing permit, Form I-95, issued to the alien, the conditions and limitations imposed in the authorization.

(g) *Authorizations issued to crewmen without limitation as to period of validity.* When a crewman who has a valid section 212(d)(3) authorization without any time limitation comes to the attention of the Service, his travel document shall be endorsed to show that the validity of his section 212(d)(3) authorization expires as of a date six months thereafter, and any previously-issued Form I-184 shall be lifted and Form I-95 shall be issued in its place and similarly endorsed.

(h) *Revocation.* The Deputy Commissioner or the district director may at any time revoke a waiver previously authorized under section 212(d)(3) of the Act and shall notify the nonimmigrant in writing to that effect.

[29 FR 15252, Nov. 13, 1964, as amended at 30 FR 12330, Sept. 28, 1965; 31 FR 10413, Aug. 3, 1966; 32 FR 15469, Nov. 7, 1967; 35 FR 3065, Feb. 17, 1970; 35 FR 7637, May 16, 1970; 35 FR 16361, Oct. 20, 1970; 40 FR 30470, July 21, 1975]

§ 212.5 Parole of aliens into the United States.

(a) In determining whether or not aliens who have been or are detained in accordance with § 235.3 (b) or (c) will be paroled out of detention, the district director should consider the following:

(1) The parole of aliens who have serious medical conditions in which continued detention would not be appropriate would generally be justified by "emergent reasons";

(2) The parole of aliens within the following groups would generally come within the category of aliens for whom

the granting of the parole exception would be "strictly in the public interest", provided that the aliens present neither a security risk nor a risk of absconding:

(i) Women who have been medically certified as pregnant;

(ii) Aliens who are defined as juveniles should only be placed in a juvenile facility or with an appropriate responsible agency or institution, recognized or licensed to accommodate juveniles by the laws of that State. A juvenile is generally defined as a person subject to the jurisdiction of a juvenile court. To determine what constitutes legal age or exceptions to the above definition in a particular State, the laws of the state where the alien is physically present will apply. Children of tender years who are too young to be placed in a juvenile facility or youth hall, and older juveniles who it is anticipated will remain in detention for a period longer than thirty days, should be placed with relatives or friends. In those extreme cases where it is impossible to accommodate a child of tender years accompanied by an adult or juvenile who will or has remained in detention for periods of over 30 days, consideration should be given to paroling the juvenile with the accompanying adult to a responsible agency, relative, or friend. When it is determined that such juvenile should be paroled from detention, the following guidelines should be followed:

(A) Juveniles may be released to a relative (brother, sister, aunt, uncle) not in Service detention who is willing to sponsor a minor and the minor may be released to that relative notwithstanding that he has a relative who is in detention.

(B) If a relative who is not in detention cannot be located to sponsor the minor, the minor may be released with an accompanying relative who is in detention.

(C) If the Service cannot locate a relative in or out of detention to sponsor the minor, but the minor has identified a nonrelative in detention who accompanied him on arrival, the question of releasing the minor and the accompanying nonrelative adult shall be addressed on a case-by-case basis.

(iii) Aliens who have close family relatives in the United States (parent, spouse, children, or siblings who are United States citizens or lawful permanent resident aliens) who are eligible to file, and have filed, a visa petition on behalf of the detainee;

(iv) Aliens who will be witnesses in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States;

(v) Aliens whose continued detention is not in the public interest as determined by the district director.

(3) Aliens subject to prosecution in the United States who are needed for the purposes of such prosecution may be paroled to the custody of the appropriate responsible agency or prosecuting authority.

(b) In the cases of all other arriving aliens except those detained under § 235.3(b) or (c), and paragraph (a) of this section, the district director in charge of a port of entry may, prior to examination by an immigration officer, or subsequent to such examination and pending a final determination of inadmissibility in accordance with sections 235 and 236 of the Act and this chapter, or after a finding of inadmissibility has been made, parole into the United States temporarily in accordance with section 212(d)(5) of the Act any such alien applicant for admission at such port of entry under such terms and conditions, including those set forth in paragraph (c) of this section, as he may deem appropriate.

(c) *Conditions.* In any case where an alien is paroled under paragraph (a) or (b) of this section, the district director may require reaonable assurances that the alien will appear at all hearings and/or depart the United States when required to do so. Not all factors listed need be present for parole to be exercised. The district director should apply reasonable discretion. The consideration of all relevant factors includes:

(1) The giving of an undertaking by the applicant, counsel, or a sponsor to ensure appearances, and a bond may be exacted on Form I-352 in such amount as the district director may deem appropriate;

(2) Community ties such as close relatives with known addresses; and

(3) Agreement to reasonable conditions (such as periodic reporting of whereabouts).

(d) *Termination of parole—(1) Automatic.* Parole shall be automatically terminated without written notice (i) upon the departure from the United States of the alien, or, (ii) if not departed, at the expiration of the time for which parole was authorized, and in the latter case the alien shall be processed in accordance with paragraph (d)(2) of this section except that no written notice shall be required.

(2) *On notice.* In cases not covered by paragraph (d)(1) of this section, upon accomplishment of the purpose for which parole was authorized or when in the opinion of the district director in charge of the area in which the alien is located neither emergency nor public interest warrants the continued presence of the alien in the United States, parole shall be terminated upon written notice to the alien and he or she shall be restored to the status which he or she had at the time of parole. Any further inspection or hearing shall be conducted under section 235 or 236 of the Act and this chapter, or any order of exclusion and deportation previously entered shall be executed. If the exclusion order cannot be executed by deportation within a reasonable time, the alien shall again be released on parole unless in the opinion of the district director the public interest requires that the alien be continued in custody.

(e) *Advance authorization.* When parole is authorized for an alien who will travel to the United States without a visa, the alien shall be issued Form I-512.

[47 FR 30045, July 9, 1982, as amended at 47 FR 46494, Oct. 19, 1982]

§ 212.6 Nonresident alien border crossing cards.

(a) *Use—(1) Nonresident alien Canadian border crossing card, Form I-185.* Any Canadian citizen or British subject residing in Canada may use Form I-185 for entry at a United States port of entry.

(2) *Mexican border crossing card, Form I-186 or I-586.* The rightful holder of a nonresident alien Mexican border crossing card, Form I-186 or I-586, may be admitted under § 235 1(f) and (g) of this title if found otherwise admissible. However, any alien seeking entry as a visitor for business or pleasure must also present a valid passport and shall be issued Form I-94 if the alien is applying for admission from:

(i) A country other than Mexico or Canada, or

(ii) Canada if the alien has been in a country other than the United States or Canada since leaving Mexico.

(b) *Application.* A citizen of Canada or a British subject residing in Canada must apply on Form I-175 for a nonresident alien border crossing card, supporting his/her application with evidence of Canadian or British citizenship, residence in Canada, and two photographs, size 1½" x 1½". Form I-175 must be submitted to an immigration officer at a Canadian border port of entry. A citizen of Mexico must apply on Form I-190 for a nonresident alien border crossing card, supporting his application with evidence of Mexican citizenship and residence, a valid unexpired passport or a valid Mexican Form 13, and one color photograph with a white background. The photograph must be glossy, unretouched and not mounted. Dimension of the facial image must be approximately one inch from chin to top of hair, and the applicant must be shown in ¾ frontal view showing right side of face with right ear visible. Form I-190 must be submitted to an immigration officer at a Mexican border port of entry or to an American consular officer in Mexico, other than one assigned to a consulate situated adjacent to the border between Mexico and the United States; however, Form FS-257 may be used in lieu of Form I-190 when the application is made to an American consular officer. If the application is submitted to an immigration officer, each applicant, regardless of age, must appear in person for an interview concerning eligibility for a nonresident alien border crossing card. If the application is submitted to a consular officer, each applicant, except a child under fourteen years of age, must appear in person for the interview. If the application is denied, the applicant shall be given a notice of denial with the reasons on Form I-180.

There is no appeal from the denial but the denial is without prejudice to a subsequent application for a visa or for admission to the United States.

(c) *Validity.* Notwithstanding any expiration dates which may appear thereon, Forms I-185, I-186, and I-586, are valid until revoked or voided.

(d) *Voidance*—(1) *At port of entry.* Forms I-185, I-186 and I-586 may be declared void by a supervisory immigration officer at a port of entry. If the card is declared void, the applicant shall be advised in writing that he/she may request a hearing before an immigration judge to determine his/her admissibility in accordance with Part 236 of this chapter and may be represented at this hearing by an attorney of his/her own choice at no expense to the Government. He/she shall also be advised of the availability of free legal services programs qualified under Part 292a of this chapter and organizations recognized under § 292.2 of this chapter, located in the district where the exclusion hearing is to be held. If the applicant requests a hearing, Forms I-185, I-186 and I-586 shall be held at the port of entry for presentation to the immigration judge. If the applicant chooses not to have a hearing, the card shall be voided. The alien to whom the form was issued shall be notified of the action taken and the reasons therefore by means of form I-180 delivered in person or, if such action is not possible, by mailing the Form I-180 to the last known address.

(2) *Within the United States.* If the holder of a Form I-185, I-186 or I-586 is placed under deportation proceedings, no action to void the card shall be taken pending the outcome of the hearing. If the alien is ordered deported or granted voluntary departure, the card shall be voided by an immigration officer. In the case of an alien holder of a Form I-185, I-186 or I-586 who is granted voluntary departure without a hearing, the card may be declared void by an immigration officer who is authorized to issue an Order to Show Cause or to grant voluntary departure.

(3) *In Mexico or Canada.* Forms I-185, I-186 or I-586 may be declared void by a consular officer in Mexico or Canada if the card was issued in one of those countries.

(4) *Grounds.* Grounds for voidance of a Form I-185, I-186 or I-586 shall be that the holder has violated the immigration laws; that he/she is inadmissible to the United States; or that he/she has abandoned his/her residence in the country upon which the card was granted.

(e) *Replacement.* If a nonresident alien border crossing card has been lost, mutilated, or destroyed, the person to whom the card was issued may apply for a new card as provided for in this section. The holder of a Form I-185, I-186 or I-586 which is in poor condition because of improper production may be issued a new form without submitting fee or application upon surrendering the original card.

(f) *Previous removal or deportation; waiver of inadmissibility.* Pursuant to the authority contained in section 212(d)(3) of the Act, the temporary admission of an alien who is inadmissible under paragraph (16) or (17) of section 212(a) of the Act is authorized if such alien is in possession of a Mexican Nonresident Alien Border Crossing Card and he establishes that he is otherwise admissible as a nonimmigrant visitor or student except for his removal or deportation prior to November 1, 1956, because of entry without inspection or lack of required documents.

[30 FR 10184, Aug. 17, 1965, as amended at 34 FR 129, Jan. 4, 1969; 35 FR 3065, Feb. 17, 1970; 37 FR 7584, Apr. 18, 1972; 37 FR 8061, Apr. 25, 1972; 45 FR 11114, Feb. 20, 1980; 46 FR 25082, May 5, 1981; 48 FR 35349, Aug. 4, 1983]

§ 212.7 Waiver of certain grounds of excludability.

(a) *Section 212 (h) or (i).* An applicant for an immigrant visa who is excludable and seeks a waiver under section 212 (h) or (i) of the Act shall file an application on Form I-601 at the consular office considering the application for a visa. Upon a determination by the consular office that the alien is admissible except for the grounds for which a waiver is sought, the Form I-601 is transmitted to the Service for decision. The applicant shall be notified of the decision and if the application is denied of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter. An applicant may withdraw his application at any time prior to final decision, whereupon the case will be closed and the consulate notified. If he fails to prosecute his application within a reasonable time either before or after interview he shall be notified that if he fails to prosecute his application within 30 days his case will be closed subject to being reopened at his request. If no action has been taken within the 30-day period immediately thereafter, the case will be closed and the appropriate consul notified.

(b) *Section 212(g) (tuberculosis and certain mental conditions)*—(1) *General.* Any alien who is ineligible for a visa and is excluded from admission into the United States under section 212(a) (1), (3), or (6) of the Act may file an Application for Waiver of Grounds of Excludability (Form I-601) under section 212(g) of the Act at an office designated in paragraph (2). The family member specified in section 212(g) of the Act may file the waiver for the applicant if the applicant is incompetent to file the waiver personally.

(2) *Locations for filing Form I-601.* Form I-601 may be filed at any one of the following offices:

(i) The American consulate where the application for a visa is being considered if the alien is outside the United States;

(ii) The Service office having jurisdiction over the port of entry where the alien is applying for admission into the United States; or

(iii) The Service office having jurisdiction over the alien if the alien is in the United States.

(3) *Section 212(a)(6) (tuberculosis).* If the alien is excludable under section 212(a)(6) of the Act because of tuberculosis, he shall execute Statement A on the reverse of page 1 of Form I-601. In addition, he or his sponsor in the United States is responsible for having Statement B executed by the physician or health facility which has agreed to supply treatment or observation; and, if required, Statement C shall be executed by the appropriate local or State health officer.

(4) *Section 212(a) (1) or (3) (certain mental conditions)*—(i) *Arrangements for submission of medical report.* If the alien is excludable under section 212(a) (1) or (3) (because of mental retardation or because of a past history of mental illness) he or his sponsoring family member shall submit an executed Form I-601 to the consular or Service office with a statement that arrangements have been made for the submission to that office of a medical report. The medical report shall contain a complete medical history of the alien, including details of any hospitalization or institutional care or treatment for any physical or mental condition; findings as to the current physical condition of the alien, including reports of chest X-ray examination and of serologic test for syphilis if the alien is 15 years of age or over, and other pertinent diagnostic tests; and findings as to the current mental condition of the alien, with information as to prognosis and life expectancy and with a report of a psychiatric examination conducted by a psychiatrist who shall, in case of mental retardation, also provide an evaluation of the alien's intelligence. For an alien with a past history of mental illness, the medical report shall also contain available information on which the U.S. Public Health Service can base a finding as to whether the alien has been free of such mental illness for a period of time sufficient in the light of such history to demonstrate recovery. Upon receipt of the medical report, the consular or Service office shall refer it to the U.S. Public Health Service for review.

(ii) *Submission of statement.* Upon being notified that the medical report has been reviewed by the U.S. Public Health Service and determined to be acceptable, the alien or the alien's sponsoring family member shall submit a statement to the consular or Service office. The statement must be from a clinic, hospital, institution, specialized facility, or specialist in the United States approved by the U.S. Public Health Service. The alien or alien's sponsor may be referred to the mental retardation or mental health agency of the state of proposed residence for guidance in selecting a post-arrival medical examining authority who will complete the evaluation and provide an evaluation report to the Centers for Disease Control. The statement must specify the name and address of the specialized facility, or specialist, and must affirm that:

(A) The specified facility or specialist agrees to evaluate the alien's mental status and prepare a complete report of the findings of such evaluation.

(B) The alien, the alien's sponsoring family member, or another responsible person has made complete financial arrangements for payment of any charges that may be incurred after arrival for studies, care, training and service;

(C) The Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, GA. 30333 shall be furnished:

(*1*) The report evaluating the alien's mental status within 30 days after the alien's arrival; and

(*2*) Prompt notification of the alien's failure to report to the facility or specialist within 30 days after being notified by the U.S. Public Health Service that the alien has arrived in the United States.

(D) The alien shall be in an outpatient, inpatient, study, or other specified status as determined by the responsible local physcian or specialist during the initial evaluation.

(5) *Assurances: Bonds.* In all cases under paragraph (b) of this section the alien or his or her sponsoring family member shall also submit an assurance that the alien will comply with any special travel requirements as may be specified by the U.S. Public Health Service and that, upon the admission of the alien into the United States, he or she will proceed directly to the facility or specialist specified for the initial evaluation, and will submit to such further examinations or treatment as may be required, whether in an outpatient, inpatient, or other status. The alien, his or her sponsoring family member, or other responsible person shall provide such assurances or bond as may be required to assure that the necessary expenses of the alien will be met and that he or she will not become a public charge. For procedures relating to cancellation or breaching of bonds, see Part 103 of this chapter.

(c) *Section 212(e).* (1) An alien who was admitted to the United States as an exchange visitor, or who acquired that status after admission, is subject to the foreign residence requirement of section 212(e) of the Act if his or her participation in an exchange program was financed in whole or in part, directly or indirectly, by a United States government agency or by the government of the country of his or her nationality or last foreign residence.

(2) An alien is also subject to the foreign residence requirement of section 212(e) of the Act if at the time of admission to the United States as an exchange visitor or at the time of acquisition of exchange visitor status after admission to the United States, the alien was a national or lawful permanent resident of a country which the Director of the United States Information Agency had designated, through public notice in the FEDERAL REGISTER, as clearly requiring the services of persons engaged in the field of specialized knowledge or skill in which the alien was to engage in his or her exchange visitor program.

(3) An alien is also subject to the foreign residence requirement of section 212(e) of the Act if he or she was admitted to the United States as an exchange visitor on or after January 10, 1977 to receive graduate medical education or training, or following admission, acquired such status on or after that date for that purpose. However, an exchange visitor already participating in an exchange program of graduate medical education or training as of January 9, 1977 who was not then subject to the foreign residence requirement of section 212(e) and who proceeds or has proceeded abroad temporarily and is returning to the United States to participate in the same program, continues to be exempt from the foreign residence requirement.

(4) A spouse or child admitted to the United States or accorded status under section 101(a)(15)(J) of the act to accompany or follow to join an exchange visitor who is subject to the foreign residence requirement of section

212(e) of the Act is also subject to that requirement.

(5) An alien who is subject to the foreign residence requirement and who believes that compliance therewith would impose exceptional hardship upon his/her spouse or child who is a citizen of the United States or a lawful permanent resident alien, or that he or she cannot return to the country of his or her nationality or last residence because he or she will be subject to persecution on account of race, religion, or political opinion, may apply for a waiver on Form I-612. The alien's spouse and minor children, if also subject to the foreign residence requirement, may be included in the application, provided the spouse has not been a participant in an exchange program.

(6) Each application based upon a claim to exceptional hardship must be accompanied by the certificate of marriage between the applicant and his or her spouse and proof of legal termination of all previous marriages of the applicant and spouse; the birth certificate of any child who is a United States citizen or lawful permanent resident alien, if the application is based upon a claim of exceptional hardship to a child, and evidence of the United States citizenship of the applicant's spouse or child, when the application is based upon a claim of exceptional hardship to a spouse or child who is a citizen of the United States.

(7) Evidence of United States citizenship and of status as a lawful permanent resident shall be in the form provided in Part 204 of this chapter. An application based upon exceptional hardship shall be supported by a statement, dated and signed by the applicant, giving a detailed explanation of the basis for his or her belief that his or her compliance with the foreign residence requirement of section 212(e) of the Act, as amended, would impose exceptional hardship upon his or her spouse or child who is a citizen of the United States or a lawful permanent resident thereof. The statement shall include all pertinent information concerning the incomes and savings of the applicant and spouse. If exceptional hardship is claimed upon medical grounds, the applicant shall submit a medical certificate from a qualified physician setting forth in terms understandable to a layman the nature and effect of the illness and prognosis as to the period of time the spouse or child will require care or treatment.

(8) An application based upon the applicant's belief that he or she cannot return to the country of his or her nationality or last residence because the applicant would be subject to persecution on account of race, religion, or political opinion, must be supported by a statement, dated and signed by the applicant, setting forth in detail why the applicant believes he or she would be subject to persecution.

(9) The applicant and his or her spouse may be interviewed by an immigration officer in connection with the application and consultation may be had with the Director, United States Information Agency and the sponsor of any exchange program in which the applicant has been a participant.

(10) The applicant shall be notified of the decision, and if the application is denied, of the reasons therefor and of the right of appeal in accordance with the provisions of Part 103 of this chapter. However, no appeal shall lie from the denial of an application for lack of a favorable recommendation from the Secretary of State. When an interested United States Government agency requests a waiver of the two-year foreign-residence requirement and the Director, United States Information Agency had made a favorable recommendation, the interested agency shall be notified of the decision on its request and, if the request is denied, of the reasons thereof, and of the right of appeal. If the foreign country of the alien's nationality or last residence has furnished statement in writing that it has no objection to his/her being granted a waiver of the foreign residence requirement and the Director, United States Information Agency has made a favorable recommendation, the Director shall be notified of the decision and, if the foreign residence requirement is not waived, of the reasons therefor and of the foregoing right of appeal. However,

this "no objection" provision is not applicable to the exchange visitor admitted to the United States on or after January 10, 1977 to receive graduate medical education or training, or who acquired such status on or after that date for such purpose; except that the alien who commenced a program before January 10, 1977 and who was readmitted to the United States on or after that date to continue participation in the same program, is eligible for the "no objection" waiver.

(Secs. 103, 203, 212 of the Immigration and Nationality Act, as amended by secs. 4, 5, 18 of Pub. L. 97-116, 95 Stat. 1611, 1620, (8 U.S.C. 1103, 1153, 1182)

[29 FR 12584, Sept. 4, 1964, and 29 FR 13242; Sept. 24, 1964, as amended at 30 FR 14776, Nov. 30, 1965; 32 FR 2500, Feb. 7, 1967; 37 FR 22725, Oct. 31, 1972; 46 FR 45327, Sept. 11, 1981; 47 FR 44235, Oct. 7, 1982; 48 FR 20684, May 9, 1983; 48 FR 23159, May 24, 1983; 48 FR 30610, July 5, 1983; 49 FR 48530, Dec. 13, 1984]

§ 212.8 Certification requirement of section 212(a)(14).

(a) *General.* The certification requirement of section 212(a)(14) of the Act applies to aliens seeking admission to the United States or adjustment of status under section 245 of the Act for the purpose of performing skilled or unskilled labor, who are preference immigrants as described in section 203(a) (3) or (6) of the Act, or who are nonpreference immigrants as described in section 203(a)(8). The certification requirement shall not be applicable to a nonpreference applicant for admission to the United States or to a nonpreference applicant for adjustment of status under section 245 who establishes that he will not perform skilled or unskilled labor. A native of the Western Hemisphere who established a priority date with a consular officer prior to January 1, 1977 and who was found to be entitled to an exemption from the labor certification requirement of section 212(a)(14) of the Act under the law in effect prior to January 1, 1977 as the parent, spouse or child of a United States citizen or lawful permanent resident alien shall continue to be exempt from that requirement for so long as the relationship upon which the exemption is based continues to exist.

(b) *Aliens not required to obtain labor certifications.* The following persons are not considered to be within the purview of section 212(a)(14) of the Act and do not require a labor certification: (1) A member of the Armed Forces of the United States; (2) a spouse or child accompanying or following to join his spouse or parent who either has a labor certification or is a nondependent alien who does not require such a certification; (3) a female alien who intends to marry a citizen or alien lawful permanent resident of the United States, who establishes satisfactorily that she does not intend to seek employment in the United States and whose fiance has guaranteed her support; (4) an alien who establishes on Form I-526 that he has invested, or is actively in the process of investing, capital totaling at least $40,000 in an enterprise in the United States of which he will be a principal manager and that the enterprise will employ a person or persons in the United States of which he will be a principal manager and that the enterprise will employ a person or persons in the United States who are United States citizens or aliens lawfully admitted for permnanent residence, exclusive of the alien, his spouse and children. A copy of a document submitted in support of Form I-526 may be accepted though unaccompanied by the original, if the copy bears a certification by an attorney, typed or rubber-stamped in the language set forth in § 204.2(j) of this chapter. However, the original document shall be submitted, if submittal is requested by the Service.

[31 FR 10021, July 23, 1966; 31 FR 10355, Aug. 22, 1966, as amended at 34 FR 5326, Mar. 18, 1969; 38 FR 31166, Nov. 12, 1973; 41 FR 37566, Sept. 7, 1976; 41 FR 55850, Dec. 23, 1976; 47 FR 44990, Oct. 13, 1982; 48 FR 19157, Apr. 28, 1983]

§ 212.9 Applicability of section 212(a)(32) to certain derivative third and sixth preference and nonpreference immigrants.

A derivative beneficiary who is the spouse or child of a qualified third or sixth preference or nonpreference immigrant and who is also a graduate of a medical school as defined by section 101(a)(41) of the Act is not considered to be an alien who is coming to the United States principally to perform services as a member of the medical profession. Therefore, a derivative third or sixth preference or nonpreference immigrant under section 203(a)(8) of the Act, who is also a graduate of a medical school, is eligible for an immigrant visa or for adjustment of status under section 245 of the Act, whether or not such derivative immigrant has passed Parts I and II of the National Board of Medical Examiners Examination or equivalent examination.

(Secs. 103, 203(a)(8), and 212(a)(32), 8 U.S.C 1103, 1153(a)(8), and 1182(a)(32))

[45 FR 63836, Sept. 26, 1980]

§ 212.10 Section 212(k) waiver.

Any applicant for admission who is in possession of an immigrant visa, and who is excludable under section 212(a) (14), (20), or (21) of the Act, may apply to the district director at the port of entry for a waiver under section 212(k) of the Act. If the application for waiver is denied by the district director, the application may be renewed in exclusion proceedings before an immigration judge as provided in Part 236 of this chapter.

(Secs. 103, 203, 212 of the Immigration and Nationality Act, as amended by secs. 4, 5, 18 of Pub. L. 97-116, 95 Stat. 1611, 1620, (8 U.S.C. 1103, 1153, 1182)

[47 FR 44236, Oct. 7, 1982]

PART 213—ADMISSION OF ALIENS ON GIVING BOND OR CASH DEPOSIT

Authority: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103.

§ 213.1 Admission under bond or cash deposit.

The district director having jurisdiction over the intended place of residence of an alien may accept a public charge bond prior to the issuance of an immigrant visa to the alien upon receipt of a request directly from a United States consular officer or upon presentation by an interested person of a notification from the consular officer requiring such a bond. Upon acceptance of such a bond, the district director shall notify the U.S. consular officer who requested the bond, giving the date and place of acceptance and the amount of the bond. The district director having jurisdiction over the place where the examination for admission is being conducted or the special inquiry officer to whom the case is referred may exercise the authority contained in section 213 of the Act. All bonds and agreements covering cash deposits given as a condition of admission of an alien under section 213 of the Act shall be executed on Form I-352 and shall be in the sum of not less than $1,000. The officer accepting such deposit shall give his receipt therefor on Form I-305. For procedures relating to bond riders, acceptable sureties, cancellation or breaching of bonds, see Part 103 of this chapter.

[29 FR 10579, July 30, 1964, as amended at 32 FR 9626, July 4, 1967]

PART 214—NONIMMIGRANT CLASSES

Sec.
214.1 Requirements for admission, extension, and maintenance of status.
214.2 Special requirements for admission, extension, and maintenance of status.
214.3 Petitions for approval of schools.
214.4 Withdrawal of school approval.
214.5 Libyan and third country nationals acting on behalf of Libyan entities.

Authority: Sections 101(a)(15) (A), (B), (E), (G), (I), and (J); 103 and 214 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1101(a)(15) (A), (B), (E), (G), (I) and (J), 1103 and 1184.

§ 214.1 Requirements for admission, extension, and maintenance of status.

(a) *General.* Every nonimmigrant alien who applies for admission to, or an extension of stay in, the United States, shall establish that he is admissible to the United States, or that any ground of inadmissibility has been waived under section 212(d)(3) of the Act. Upon application for admission, the alien shall present a valid passport and valid visa unless either or both documents have been waived. However, an alien applying for extension of stay shall present a passport only if requested to do so by the Service. The passport of an alien applying either for admission or extension of stay shall be valid for a minimum of six months from the expiration date of the contemplated period of stay, unless otherwise provided in this chapter. A nonimmigrant alien applying for admission or extension of stay shall agree to abide by all the terms and conditions of his admission or extension. He shall also agree to depart the United States at the expiration of his authorized period of admission or extension, or upon abandonment of his authorized nonimmigrant status. At the time a nonimmigrant alien applies for admission or extension of stay he shall post a bond on Form I-352 in the sum of not less than $500, to insure the maintenance of his nonimmigrant status and his departure from the United States, if required to do so by the District Director, Immigration Judge, or Board of Immigration Appeals.

(b) *Readmission of nonimmigrants under section 101(a)(15) (F), (J), or (M) to complete unexpired periods of previous admission or extension of stay*—(1) *Section 101(a)(15)(F).* The inspecting immigration officer shall readmit for duration of status as defined in § 214.2(f)(5)(iii), any nonimmigrant alien whose nonimmigrant visa is considered automatically revalidated pursuant to 22 CFR 41.125(f) and who is applying for readmission under section 101(a)(15)(F) of the Act, if the alien:

(i) Is admissible;

(ii) Is applying for readmission after an absence from the United States not exceeding thirty days solely in contiguous territory or adjacent islands;

(iii) Is in possession of a valid passport unless exempt from the requirement for presentation of a passport; and

(iv) Presents, or is the accompanying spouse or child of an alien who presents, an Arrival-Departure Record, Form I-94, issued to the alien in connection with the previous admission or stay, the alien's Form I-20 ID copy, and either:

(A) A properly endorsed page 4 of Form I-20A-B if there has been no substantive change in the information on the student's most recent Form I-20A since the form was initially issued; or

(B) A new Form I-20A-B if there has been any substantive change in the information on the student's most recent Form I-20A since the form was initially issued.

(2) *Section 101(a)(15)(J).* The inspecting immigration officer shall readmit for the unexpired period of stay authorized prior to the alien's departure, any nonimmigrant alien whose nonimmigrant visa is considered automatically revalidated pursuant to 22 CFR 41.125(f) and who is applying for readmission under section 101(a)(15)(J) of the Act, if the alien:

(i) Is admissible;

(ii) Is applying for readmission after an absence from the United States not exceeding thirty days solely in contiguous territory or adjacent islands;

(iii) Is in possession of a valid passport unless exempt from the requirement for the presentation of a passport; and

(iv) Presents, or is the accompanying spouse or child of an alien who presents, Form I-94 issued to the alien in connection with the previous admission or stay or copy three of the last Form IAP-66 issued to the alien. Form I-94 or Form IAP-66 must show the unexpired period of the alien's stay endorsed by the Service.

(3) *Section 101(a)(15)(M).* The inspecting immigration officer shall readmit for the unexpired period of stay authorized prior to the alien's departure, any nonimmigrant alien whose nonimmigrant visa is considered automatically revalidated pursuant to 22 CFR 41.125(f) and who is applying for readmission under section 101(a)(15)(M) of the Act, if the alien:

(i) Is admissible;

(ii) Is applying for readmission after an absence not exceeding thirty days solely in contiguous territory;

(iii) Is in possession of a valid passport unless exempt from the requirement for presentation of a passport; and

(iv) Presents, or is the accompanying spouse or child of an alien who presents, Form I-94 issued to the alien in connection with the previous admission or stay, the alien's Form I-20 ID copy, and a properly endorsed page 4 of Form I-20M-N.

(c) *Extension of stay*—(1) *General.* Any nonimmigrant alien defined in section 101(a)(15) (A) (i) or (ii) or (G)(i), (ii), (iii), or (iv) of the Act is to be admitted for, or granted a change of nonimmigrant classification for, as long as that alien continues to be recognized by the Secretary of State for that status. The alien need not apply for an extension of stay. Any nonimmigrant alien defined in section 101(a)(15) (C), (D), or (K) of the Act, or any alien admitted in transit without a visa, is ineligible for an extension of stay. A nonimmigrant defined in section 101(a)(15) (F) or (M) of the Act shall apply for an extension of stay on Form I-538. A nonimmigrant alien defined in section 101(a)(15)(J) of the Act shall apply for an extension of stay on Form IAP-66. An alien in any other nonimmigrant classification shall apply for an extension of stay on Form I-539. Except as provided in paragraph (c)(3) of this section, each alien seeking an extension of stay generally must execute and submit a separate application for extension of stay to the district office having jurisdiction over the alien's place of temporary residence in the United States.

(2) *Time of filing application.* The application must be submitted at least fifteen days but not more than sixty days before the expiration of the alien's currently authorized stay. If failure to file a timely application is found to be excusable, an extension of stay may be granted, but the extension must date from the time of expiration of the previously authorized stay.

(3) *Family members of principal alien.* Regardless of whether a principal nonimmigrant alien's spouse and minor unmarried children accompanied the principal alien to the United States, the spouse and children may be included in the principal alien's application for extension of stay without any additional fee. Extensions granted to members of a family group must be for the same period of time. If one member is eligible for only a six-month extension and another for a twelve-month extension, the shorter period will be granted to all members of the family.

(4) *Decision on application for extension of stay.* The district director shall notify the applicant of the decision and, if the application is denied, of the reason(s) for the denial. The applicant may not appeal the decision.

(5) *Less than thirty days' additional time.* When, because of conditions beyond an alien's control or other special circumstances, an alien needs an additional period of less than thirty days beyond the previously authorized stay within which to depart from the United States, the alien may present the alien's Form I-94 or, in the case of a nonimmigrant defined in section 101(a)(15) (F) or (M) of the Act, the alien's Form I-20 ID copy, at the district office having jurisdiction over the alien's place of temporary residence in the United States. The requested time may be granted without a formal application.

(6) *Bonds.* For procedures on cancelling and breaching bonds, see § 103.6 (c) and (e) of this title.

(d) *Termination of status.* Within the period of initial admission or extension of stay, the nonimmigrant status of an alien shall be terminated by the revocation of a waiver previously authorized in his behalf under section 212(d) (3) or (4) of the Act; or by the introduction of a private bill to confer permanent resident status on such alien.

(e) *Employment.* A nonimmigrant in the United States in a class defined in section 101(a)(15)(B) of the Act as a temporary visitor for pleasure, or section 101(a)(15)(C) of the Act as an alien in transit through this country, may not engage in any employment. Any other nonimmigrant in the United States may not engage in any employment unless he has been accorded a nonimmigrant classification which authorizes employment or he has been granted permission to engage in employment in accordance with the provisions of this chapter. A nonimmigrant who is permitted to engage in employment may engage only in such employment as has been authorized. Any unauthorized employment by a nonimmigrant constitutes a failure to maintain status within the meaning of section 241(a)(9) of the Act.

(f) *False information.* A condition of a nonimmigrant's admission and continued stay in the United States is the full and truthful disclosure of all information requested by the Service. Willful failure by a nonimmigrant to provide full and truthful information requested by the Service (regardless of whether or not the information requested was material) constitutes a failure to maintain nonimmigrant status under section 241(a)(9) of the Act.

(g) *Criminal activity.* A condition of a nonimmigrant's admission and continued stay in the United States is obedience to all laws of United States jurisdictions which prohibit the commission of crimes of violence and for which a sentence of more than one year imprisonment may be imposed. A nonimmigrant's conviction in a jurisdiction in the United States for a crime of violence for which a sentence of more than one year imprisonment may be imposed (regardless of whether such sentence is in fact imposed) constitutes a failure to maintain status under section 241(a)(9) of the Act.

[26 FR 12067, Dec. 16, 1961, as amended at 36 FR 8048, Apr. 29, 1971; 37 FR 14288, June 19, 1972; 43 FR 12674, Mar. 27, 1978; 44 FR 65727, Nov. 14, 1979; 48 FR 14582, Apr. 5, 1983; 48 FR 20685, May 9, 1983; 48 FR 30350, July 1, 1983]

§ 214.2 Special requirements for admission, extension, and maintenance of status.

The general requirements in § 214.1 are modified for the following nonimmigrant classes:

(a) *Foreign government officials*—(1) *General.* The determination by a consular officer prior to admission and the recognition by the Secretary of State subsequent to admission is evidence of the proper classification of a nonimmigrant under section 101(a)(15)(A) of the Act. An alien who has a nonimmigrant status under section 101(a)(15)(A) (i) or (ii) of the Act is to be admitted for the duration of the period for which the alien continues to be recognized by the Secretary of State as being entitled to that status. An alien defined in section (101)(a)(15)(A)(iii) of the Act is to be admitted for an initial period of not more than three years, and may be granted extensions of temporary stay in increments of not more than two years. In addition, the application for extension of temporary stay must be accompanied by a statement signed by the employing official stating that he/she intends to continue to employ the applicant and describing the type of work the applicant will perform.

(2) *Employment.* The spouse, unmarried dependent son or unmarried dependent daughter habitually residing with a foreign government official classified as a nonimmigrant under section 101(a)(15)(A)(i) or (ii) of the Act as an officer or employee assigned to a diplomatic or consular office in the United States may be granted permission to accept or continue employment in the United States if an application to do so has first been favorably recommended by an authorized representative of the Department of State and approved by the District Director of the Service as indicated below. To apply, the spouse or unmarried dependent son or unmarried dependent daughter shall first submit Form I-566 to the Office of Protocol of the Department of State for transmission to the Visa Office. The form shall be accompanied by a certification by the diplomatic mission of the Government employing the principal alien that the applicant is the spouse or unmarried dependent son or unmarried dependent daughter of an official of that Government whose assignment is expected to last more than six months. The applicant shall also submit with the application a statement from the prospective employer describing the position and salary offered, the duties of the position and verification that the applicant possesses the necessary qualifications for the position. The application may be appoved if both the authorized representative of the Department of State and the District Director of this Service at Washington, DC are satisfied that:

(i) Both the principal alien and the applicant desiring employment are maintaining A-1 or A-2 status; (ii) the proposed employment is not in an occupation listed in the Department of

Labor Schedule B (20 CFR Part 656) or otherwise determined by the Department of Labor to be one for which there is an oversupply of qualified U.S. workers in the area of proposed employment, except in the case of the employment of an unmarried dependent son or unmarried dependent daughter in A-1 or A-2 status who is a full-time student, if the employment is part-time, consisting of not more than 20 hours per week and/or if it is temporary employment of not more than 12 weeks at a time during school holiday periods; *Provided*, That if an A-1 or A-2 alien was authorized to accept full-time employment in a Schedule B occupation prior to the effective date of this regulation he/she may continue in that employment for a period of 2 years following the effective date of this regulation; (iii) employment of a similar nature for family members of United States Government officials assigned to a diplomatic or consular office in the country employing the principal alien is not prohibited by the host country government; and (iv) the proposed employment would not be contrary to the interests of the United States. Employment of A-1 or A-2 aliens who have criminal records, or who have violated the immigration and nationality laws or regulations or who worked illegally or who cannot establish that they paid taxes on income from previous U.S. employment may be considered contrary to the interests of the United States. However, an A-1 or A-2 alien who is working without authorization on the effective date of this regulation must apply for authority to continue that work within 90 days of the effective date of this regulation. He/she must comply with the terms of this regulation in all respects except for the provision relating to illegal employment, and the fact of such illegal employment will not be construed against him/her in considering that application for employment. Permission to accept employment may not be granted to A-1 or A-2 spouses, unmarried dependent sons or unmarried dependent daughters if the principal alien will be stationed in this country for a definite period of six months or less. Permission to accept or continue employment under this section shall be granted in increments of not more than two years each. There shall be no appeal from a denial of permission to accept or continue employment under this section. The Service will inform the A-1 or A-2 applicant by letter whether the application has been granted or denied and if denied, of the reasons therefor. When an application is approved, the Service shall inform the Internal Revenue Service and Department of Labor. A family member of a principal alien classified A-3 may not be employed in the United States under these regulations.

(3) *Special requirements.* (i) Notwithstanding the provisions of paragraph (a)(2) of this section, dependents of employees assigned to official duty in the United States may accept unrestricted employment based on agreements entered into between the Department of State and foreign states if the following conditions are met:

(A) The embassy of the foreign state in Washington, D.C. has made an official request to the Office of Protocol of the Department of State;

(B) The Office of Protocol recognizes the person as a dependent of an official employee; and

(C) The Office of Protocol has informed the embassy of the state that the dependent has permission to accept employment.

(ii) Dependents who obtain employment under this paragraph are responsible for payment of income taxes and Social Security contributions on any remuneration received. Further, immunity from civil or administrative jurisdiction in accordance with Article 37 of the Vienna Convention on Diplomatic Relations is waived for these dependents with respect to all matters arising out of their employment. The term "dependents" in this paragraph means the employee's:

(A) Spouse;

(B) Unmarried dependent children under 21 years of age;

(C) Unmarried dependent children under 25 years of age who are in full-time attendance at postsecondary educational institutions; or

(D) Unmarried children who are physically or mentally disabled.

(b) *Visitors*—(1) *General*. Any B-1 visitor for business or B-2 visitor for pleasure may be admitted for not more than one year and may be granted an extension of a temporary stay in increments of not more than 6 months each, except that alien members of a religious denomination coming temporarily and solely to do missionary work in behalf of that denomination may be granted an extension of stay in increments of not more than one year each, provided that such work does not involve the selling of articles or the solicitation or acceptance of donations.

(2) *Minimum six month admissions*. Any B-2 visitor who is found otherwise admissible and is issued a Form I-94, will be admitted for a minimum period of six months, regardless of whether less time is requested, provided, that any required passport is valid as specified in section 212(a)(26) of the Act. Exceptions to the minimum six month admission may be made only in individual cases upon the specific approval of the district director for good cause.

(c) *Transits*—(1) *Without visas*. An applicant for admission under the transit without visa privilege must establish that he is admissable under the immigration laws; that he has confirmed and onward reservations to at least the next country beyond the United States, and that he will continue his journey on the same line or a connecting line within 8 hours after his arrival; however, if there is no scheduled transportation within that 8-hour period, continuation of the journey thereafter on the first available transport will be satisfactory. Transfers from the equipment on which an applicant arrives to other equipment of the same or a connecting line shall be limited to 2 in number, with the last transport departing foreign (but not necessarily nonstop foreign), and the total period of waiting time for connecting transportation shall not exceed 8 hours except as provided above. Notwithstanding the foregoing, an applicant, if seeking to join a vessel in the United States as a crewman, shall be in possession of a valid "D" visa and a letter from the owner or agent of the vessel he seeks to join, shall proceed directly to the vessel on the first available transportation and upon joining the vessel shall remain aboard at all times until it departs from the United States. Except for transit from one part of foreign contiguous territory to another part of the same territory, application for direct transit without a visa must be made at one of the following ports of entry: Agana, Guam, Anchorage, Alaska, Atlanta, Ga., Baltimore, Md., Bangor, Maine, Boston, Mass., Brownsville, Tex., Buffalo, N.Y., Charlotte Amalie, V.I., Chicago, Ill., Christiansted, V.I., Dallas, Tex., Denver, Colo., Detroit, Mich., Fairbanks, Alaska Hartford, Conn., Honolulu, Hawaii, Houston, Tex., Los Angeles, Calif., Miami, Fla., Newark, N.J., New Orleans, La., New York, N.Y., Niagara Falls, N.Y., Norfolk, Va., Philadelphia, Pa., Pittsburgh, Pa., Ponce, P.R., Port Everglades Fla., Portland, Oreg., San Antonio, Tex., San Diego, Calif., San Francisco, Calif., San Juan, P.R., Seattle, Wash., St. Paul, Minn., Tampa, Fla., Washington, D.C. The privilege of transit without a visa may be authorized only under the conditions that the transportation line, without the prior consent of the Service, will not refund the ticket which was presented to the Service as evidence of the alien's confirmed and onward reservations; that the alien will not apply for extension of temporary stay or for adjustment of status under section 245 of the Act, and that until his departure from the United States responsibility for his continuous actual custody will lie with the transportation line which brought him to the United States unless at the direction of the district director he is in the custody of this Service or other custody approved by the Commissioner.

(2) *United Nations Headquarters District*. An alien of the class defined in section 101(a)(15)(C) of the Act, whose visa is limited to transit to and from the United Nations Headquarters District, if otherwise admissible, shall be admitted on the additional conditions that he proceed directly to the immediate vicinity of the United Nations Headquarters District, and remain there continuously, departing therefrom only if required in connection with his departure from the

United States, and that he have a document establishing his ability to enter some country other than the United States following his sojourn in the United Nations Headquarters District. The immediate vicinity of the United Nations Headquarters District is that area lying within a twenty-five mile radius of Columbus Circle, New York City, New York.

(3) *Others.* The period of admission of an alien admitted under section 101(a)(15)(C) of the Act shall not exceed 29 days.

(d) *Crewmen.* The provisions of Parts 252 and 253 of this chapter shall govern the landing of crewmen as nonimmigrants of the class defined in section 101(a)(15)(D) of the Act.

(e) *Traders and investors.* An alien defined in section 101(a)(15)(E) of the Act may be admitted for an initial period of not more than one year and may be granted extensions of temporary stay in increments of not more than two years. A trader or investor and his or her spouse or child who accompanied or followed to join the trader or investor, who acquired nonimmigrant status on or after December 24, 1952 under section 101(a)(15)(E) (i) or (ii) of the Act shall submit to the district director having jurisdiction over the aliens place of residence properly executed Forms I-539 and I-126 to apply for an extension of the period of his or her temporary admission. A trader or investor may change from one employer to another after a written request for permission to do so has been approved by the district director having jurisdiction over the alien's residence. The request must be supported by evidence that the requester would still be classifiable as a trader or investor in the new employment. After the request is granted, Service offices shall make a notation on the reverse of the alien's Form I-94 reading "Employment by (name of new employer) authorized", followed by the date of the authorization. Any unauthorized change to a new employer will constitute a failure to maintain status within the meaning of section 241(a)(9) of the Act.

(f) ***Students in colleges, universities, seminaries, conservatories, academic high schools, elementary schools, other academic institutions, and in language training programs***—(1) *Admission of student*—(i) *Eligibility for admission.* Except as provided in paragraph (f)(4) of this section, an alien seeking admission to the United States under section 101(a)(15)(F)(i) of the Act (as an F-1 student) and the student's accompanying F-2 spouse and minor children, if applicable, are not eligible for admission unless—

(A) The student presents a Certificate of Eligibility for Nonimmigrant (F-1) Student Status, Form I-20A-B, properly and completely filled out by the student and by the designated official of the school to which the student is destined and the documentary evidence of the student's financial ability required by that form; and

(B) It is established that the student is destined to and intends to attend the school specified in the student's visa, unless the student is exempt from the requirement for presentation of a visa.

(ii) *Disposition of Form I-20A-B.* When a student is admitted to the United States, the inspecting officer shall forward Form I-20A-B to the Service's processing center. The processing center shall forward the Form I-20B to the school which issued the form to notify the school of the student's admission.

(2) *Form I-20 ID copy.* The first time an F-1 student comes into contact with the Service for any reason, the student must present to the Service a Form I-20A-B properly and completely filled out by the student and by the designated official of the school the student is attending or intends to attend. The student will be issued a Form I-20 ID copy with his or her admission number. The student must have the Form I-20 ID copy with him or her at all times. If the student loses the Form I-20 ID copy, the student must request a new Form I-20 ID copy on Form I-102 from the Service office having jurisdiction over the school the student was last authorized to attend.

(3) *Spouse and minor children following to join student.* The F-2 spouse and minor children following to join an F-1 student are not eligible for admission to the United States unless they present, as evidence that the stu-

dent is or will, within sixty days, be enrolled in a full course of study or is engaged in approved practical training, either—

(i) A properly endorsed page 4 of Form I-20A-B if there has been no substantive change in the information on the student's most recent Form I-20A since the form was initially issued; or

(ii) A new Form I-20A-B if there has been any substantive change in the information on the student's most recent Form I-20A since the form was initially issued.

(4) *Temporary absence*—(i) *General*. An F-1 student returning to the United States from a temporary absence to attend the school which the student was previously authorized to attend must present either—

(A) A properly endorsed page 4 of Form I-20A-B if there has been no substantive change in the information on the student's most recent Form I-20A since the form was initially issued; or

(B) A new Form I-20A-B if there has been any substantive change in the information on the student's most recent Form I-20A since the form was initially issued.

(ii) *Student who transferred between schools*. If an F-1 student has been authorized to transfer between schools and is returning to the United States from a temporary absence in order to attend the school to which transfer was authorized as indicated on the student's Form I-20 ID copy, the name of the school to which the student is destined does not need to be specified in the student's visa.

(5) *Duration of status*—(i) *General*. Subject to the condition that the alien's passport is valid for a minimum period of six months at all times while in the United States (including any automatic revalidation accorded by agreement between the United States and the country which issued the alien's passport) unless the alien is exempt from the requirement for presentation of a passport.

(A) Any alien admitted to the United States as an F-1 student is to be admitted for duration of status as defined in paragraph (f)(5)(iii) of this section; and

(B) Any alien granted a change of nonimmigrant classification to that of an F-1 student is considered to be in status for duration of status as defined in paragraph (f)(5)(iii) of this section.

(ii) *Conversion to duration of status*. Any F-1 student in a college, university, seminary, conservatory, academic high school, elementary school, or other academic institution, or in a language training program who is pursuing a full course of study and is otherwise in status as a student, is automatically granted duration of status. The dependent spouse and children of the student are also automatically granted duration of status if they are maintaining F-2 status. Any alien converted to duration of status under this paragraph need not present Form I-94 to the Service. This paragraph constitutes official notification of conversion to duration of status. The Service will issue a new Form I-94 to the alien when the alien comes into contact with the Service.

(iii) *Meaning of duration of status*. For purposes of this chapter, duration of status means the period during which the student is pursuing a full course of study in one educational program (e.g., elementary school, high school, bachelor's degree program, or master's degree program) and any period or periods of authorized practical training, plus thirty days following completion of the course of study or authorized practical training within which to depart from the United States. An F-1 student at an academic institution is considered to be in status during the summer if the student is eligible, and intends, to register for the next term. A student attending a school on a quarter or trimester calendar who takes only one vacation a year during any one of the quarters or trimesters instead of during the summer, however, is considered to be in status during that vacation provided that the student is eligible, and intends, to register for the next term and the student has completed the equivalent of an academic year prior to taking the vacation. An F-1 student who is compelled by illness to interrupt or reduce a course of study may be permitted to remain in the United States in duration of status for the time necessary to complete the course of study provided that it is established that the student will pursue a full course of study upon recovery from the illness.

(6) *Full course of study.* Successful completion of the course of study must lead to the attainment of a specific educational or professional objective. For purposes of this paragraph, a college or university is an institution of higher learning which awards recognized associate, bachelor's, master's, doctor's, or professional degrees. Schools which devote themselves exclusively or primarily to vocational, business, or language instruction are not included in the category of colleges or universities. A "full course of study" as required by section 101(a)(15) (F)(i) of the Act means:

(i) Postgraduate study or postdoctoral study or research at a college or university, or undergraduate or postgraduate study at a conservatory or religious seminary, certified by a designated school official as a full course of study;

(ii) Undergraduate study at a college or university, certified by a school official to consist of at least twelve semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter-hour systems, where all undergraduate students enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or considered full-time for other administrative purposes, or its equivalent (as determined by the district director) except when the student needs a lesser course load to complete the course of study during the current term;

(iii) Study in a postsecondary language, liberal arts, fine arts, or other nonvocational program at a school which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning within category (1) or (2) of § 214.3(c), and which has been certified by a designated school official to consist of at least twelve hours of instruction a week, or its equivalent as determined by the district director;

(iv) Study in any other language, liberal arts, fine arts, or other nonvocational training program, certified by a designated school official to consist of at least eighteen clock hours of attendance a week provided that the dominant part of the course of study consists of classroom instruction and twenty-two clock hours a week provided that the dominant part of the course of study consists of laboratory work; or

(v) Study in a primary or academic high school curriculum certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation.

(7) *Extension of stay*—(i) *General.* Any F-1 student who has completed or has been pursuing a full course of study in one educational program and who wishes to complete another educational program must apply for an extension of stay. Any F-1 student who has completed one educational program and who desires to complete another educational program at the same level of educational attainment, for example, a second master's degree, must also apply for an extension of stay. If the student also wishes to transfer to another school, the student must apply for a school transfer in the same application. If the student has not been pursuing a full course of study at the school the student was last authorized to attend, the student must apply for reinstatement to student status in accordance with the provisions of paragraph (f)(12) of this section.

(ii) *Eligibility.* An F-1 student may be granted an extension of stay if it is established that the student:

(A) Is a bona fide nonimmigrant currently maintaining student status; and

(B) Is able to, and in good faith intends to, continue to maintain that status for the period for which the extension is granted.

(iii) *Application.* An F-1 student must apply for an extension of stay on Form I-538. A student's F-2 spouse and children desiring an extension of stay must be included in the application. A student's F-2 spouse or children are not eligible for an extension of stay unless the student is granted an extension of stay. The student must submit the application to the Service office having jurisdiction over the school the student was last authorized to attend at least fifteen days but not more than sixty days before the expiration of the student's currently authorized stay. The application must be accompanied by the student's Form I-20 ID copy, and the Forms I-94 of the student's spouse and children, if applicable.

(iv) *School transfer in conjunction with an application for extension of stay.* If an F-1 student wishes to transfer to another school to pursue another educational program, the student's application for an extension of stay and school transfer must be accompanied by Form I-20A-B properly and completely filled out by the student and by the designated official of the school the student wishes to attend. Sixty days after having filed an application for extension of stay and school transfer, an F-1 student may effect the transfer subject to approval or denial of the application. Any F-1 student who transfers without complying with this regulation or whose application is denied after transfer is considered to be out of status. If the application for transfer is approved, the approval of the transfer will be retroactive to the date of filing the application. The adjudicating officer shall endorse the name of the school to which the transfer has been authorized on the student's Form I-20 ID copy. The officer shall also endorse Form I-20B to indicate that a school transfer has been authorized and forward it with Form I-20A to the Service's processing center for file updating. The processing center shall forward Form I-20B to the school to which transfer has been authorized to notify the school of the action taken.

(v) *Period of stay.* If an application for extension of stay is granted, the student and the student's spouse and children, if applicable, are to be granted duration of status as defined in paragraph (f)(5)(iii) of this section.

(8) *School transfer within the same educational program*—(i) *Eligibility.* An F-1 student is eligible to transfer to another school if the student:

(A) Is a bona fide nonimmigrant student;

(B) Has been pursuing a full course of study at the school the student was last authorized to attend;

(C) Intends to pursue a full course of study at the school to which the student intends to transfer; and

(D) Is financially able to attend the school to which the student intends to transfer.

(ii) *Procedure at school student was last authorized to attend.* Except in conjunction with an application for extension of stay as provided in paragraph (f)(7) of this section, an F-1 student who wants to transfer between schools must obtain from the school to which the student intends to transfer a properly completed Form I-20A-B relating to the student's eligibility for F-1 status. The student must give the Form I-20A-B to the school the student was last authorized to attend. The designated official of the school which the student was last authorized to attend must:

(A) Endorse Form I-20 Transfer to reflect the fact that the student has indicated the intent to transfer between schools and to give the recommendation of the designated school official at the school the student was last authorized to attend concerning the proposed transfer and the reasons for that recommendation if it is negative;

(B) Submit the endorsed Form I-20 Transfer with Form I-20A to the Service's processing center within thirty days of the date the student gave the official the Form I-20A-B.

(C) Send Form I-20B to the school to which the student intends to transfer to notify that school that Form I-20 Transfer has been submitted to the Service; and

(D) Give to the student the student transfer copy of Form I-20 Transfer within thirty days of the date the student gave the official a copy of the Form I-20A-B.

(iii) *Procedure at school to which the student transfers.* Within thirty days of the date the student registers at the new school, the designated school official at that school must endorse the student's Form I-20 ID copy to indicate the name of the school to which the student has transferred and the name, title, and signature of the designated school official of that school.

(iv) *General.* Except as provided in paragraph (f)(7)(iv) of this section, an F-1 student is authorized to transfer from one approved school to another if the procedures described in paragraphs (f)(8) (ii) and (iii) of this section are followed. In the case of a school transfer under paragraphs (f)(8) (ii) and (iii) of this section, a student who transfers to another school without furnishing to the designated official of the school the student was last authorized to attend a properly completed Form I-20A-B from the school the student intends to attend is considered to be out of status. In the case of a school transfer under paragraphs (f)(8) (ii) and (iii) of this section, if the designated school official at the school the student was last authorized to attend does not follow the procedure described in paragraph (f)(8)(ii) of this section, the student is considered to be out of status unless the student reports this noncompliance with the regulations, in writing, to the Service office having jurisdiction over that school, within forty days of the date the student gave the official the copy of Form I-20A-B. Any student who does not enroll in the new school in the first term or session which begins after the student leaves the previous school is considered to be out of status; however, if the student is entitled to a vacation as provided in paragraph (f)(5)(iii) of this section, the student may enroll in the new school in the first term or session which begins after that vacation. If a student who has not been pursuing a full course of study at the school the student was last authorized to attend desires to attend a different school, the student must apply for reinstatement to student status in accordance with the provisions of paragraph (f)(12) of this section. In the case of a school transfer under paragraphs (f)(8) (ii) and (iii) of this section, if a student transfers to an approved school other than the one to which the student initially indicated the intent to transfer, the student must apply for reinstatement to student status in accordance with the provisions of paragraph (f)(12) of this section.

(9) *Employment*—(i) *On-campus employment.* On-campus employment means employment performed on the school's premises. On-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship is deemed to be part of the academic program of a student otherwise taking a full course of study. An F-1 student may, therefore, engage in this kind of on-campus employment or any other on-campus employment which will not displace a United States resident. Employment authorized under this paragraph must not exceed twenty hours a week while school is in session. An F-1 student authorized to work under this paragraph however, may work full-time when school is not in session (including during the student's vacation) if the student is eligible, and intends, to register for the next term or session. The student may not engage in on-campus employment after completion of the student's course or courses of study, except employment for practical training as authorized under paragraph (f)(10) of this section.

(ii) *Application for off-campus employment.* Off-campus employment is prohibited for students who remain in the United States in F-1 status for one year or less. Off-campus employment is also prohibited during the first year in the United States for students who remain in the United State in F-1 status for more than one year. If a student pursues more than one course of study, off-campus employment is prohibited only during the first year of study in the United States. The first year of study means the first full year in the United States in bona fide F-1 status. A temporary absence of five months or less from the United States during the first full year does not disqualify an F-1 student from being eligible for employment authorization. An F-1 student in a program longer than one year must apply for employment authorization on Form I-538 accompained by the student's Form I-20 ID copy. The student must submit the application to the office of this Service having jurisdiction over the school the student was last authorized to attend. The designated school official must certify on Form I-538 that the student—

(A) Is in good standing as a student who is carrying a full course of study as defined in paragraph (f)(6) of this section;

(B) Has demonstrated economic necessity due to unforeseen circumstances arising subsequent to entry or subsequent to change to student classification;

(C) Has demonstrated that acceptance of employment will not interfere with the student's carrying a full course of study; and

(D) Has agreed not to work more than twenty hours a week when school is in session.

(iii) *Conditions for off-campus employment.* If off-campus employment is authorized, the adjudicating officer shall endorse the authorization on the student's Form I-20 ID copy and shall note the dates on which the employment authorization begins and ends. The employment authorization may be granted up to the expected date of completion of the student's current course of study. A student has permission to engage in off-campus employment only if the student receives his or her Form I-20 ID copy endorsed to that effect. Off-campus employment authorized under this section must not exceed twenty hours a week while school is in session. Any student authorized to work off-campus, however, may work full-time when school is not in session (including during the student's vacation) if the student is eligible, and intends, to register for the next term or session. Permission to engage in off-campus employment is terminated when the student transfers from one school to another or when the need for that employment ceases. Furthermore, a student may not engage in off-campus employment after completion of the student's course or courses of study except as authorized under paragraph (f)(10) of this section.

(iv) *Temporary absence of F-1 student granted off-campus employment authorization.* If a student who has been granted off-campus employment authorization departs from the United States temporarily and is readmitted to the United States during the period of time when employment is authorized, the student may resume the previously authorized employment. The student must be returning to attend the same school the student was authorized to attend when permission to accept off-campus employment was granted.

(v) *Effect of strike or other labor dispute.* Authorization for all employment, whether or not part of an academic program, is automatically suspended upon certification by the Secretary of Labor or the Secretary's designee to the Commissioner of Immigration and Naturalization or the Commissioner's designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place of employment. As used in this paragraph, "place of employment" means wherever the employer or a joint employer does business.

(vi) *Spouse and children of F-1 student.* The F-2 spouse and children of an F-1 student may not accept employment.

(10) *Practical training*—(i) *When practical training may be authorized.* Temporary employment for practical training may be authorized only—

(A) After completion of the course of study if the student intends to engage in only one course of study;

(B) After completion of at least one course of study if the student intends to engage in more than one course of study;

(C) After completion of all course requirements for the degree if the student is in a bachelor's, master's, or doctoral degree program;

(D) Before completion of the course of study if the student is attending a college, university, seminary, or conservatory which requires practical training of all degree candidates in a specified professional field and the student is a candidate for a degree in that field; or

(E) Before completion of the course of study during the student's annual vacation if recommended by the designated school official as beneficial to the student's academic program.

(ii) *Application for practical training*—(A) *General.* An F-1 student must apply for permission to accept or continue employment for practical traning on Form I-538 accompanied by the student's Form I-20 ID copy. The designated school official must certify on Form I-538 that—

(*1*) The proposed employment is for the purpose of practical training;

(*2*) The proposed employment is related to the student's course of study;

(*3*) Upon the designated school official's information and belief, employment comparable to the proposed employment is not available to the student in the country of the student's foreign residence.

(B) *Application to accept practical training after completion of course of study.* A student must file an application for permission to accept practical training after completion of a course of study not more than sixty days before completion of the course of study, nor more than thirty days after completion of the course of study. The application must be submitted to the Service office having jurisdiction over the school the student was last authorized to attend. The student need not have been offered temporary employment for practical training.

(C) *Application to continue practical training after completion of course of study.* A student must file an application for permission to continue employment for practical training after completion of a course of study at least fifteen days but not more than sixty days before the expiration of the applicant's currently authorized practical training. The application must be submitted to the Service office having jurisdiction over the actual place of employment. It must be accompanied by a letter from the applicant's employer stating the applicant's occupation, the exact date employment began, and the date the employment will terminate, and describing in detail the duties of the applicant's occupation.

(D) *Application for practical training before completion of course of study.* A student must submit an application for permission to engage in practical training before completion of the course of study to the Service office having jurisdiction over the school the student was last authorized to attend. The student need not have been offered temporary employment for practical training unless the student is applying for permission to continue practical training. In that case, the application must be accompanied by a letter from the student's employer stating the student's occupation, the exact date employment began, and the date the employment will terminate, and describing in detail the duties of the student's occupation.

(iii) *Duration of practical training.* If permission to engage in employment for practical training is granted, the adjudicating officer shall endorse the permission on the student's Form I-20 ID copy and shall note on that form the dates on which the practical training permission begins and ends. A student may engage in employment for practical training only when the student receives the Form I-20 ID copy endorsed to that effect. Provided that the student's course of study is of at least twelve months' duration, the Service may grant a student not in a language training program permission to accept temporary employment for practical training for six months or less if the student has not been offered temporary employment for practical training; for twelve months or less if the student has been offered temporary employment for practical training; or to continue temporary employment for practical training for eight months or less. The period of practical training which may be granted during a student's vacation, however, is limited to the length of the vacation rounded off to the closest number of months. A student may not be granted a period of practical training which would result in the student's being engaged in practical training for more than twelve months in the aggregate. When the course of study is of less than twelve months' duration, an F-1 student not in a language training program may be granted permission to engage in employment for practical training for an aggregate number of months not exceeding the length of the student's course of study. An F-1 student in a language training program may be granted employment for practical training for a period or periods of time equal to one month for each four months during which the student carried a full course of study at the school(s) the student was authorized to attend in the United States. Practical training authorized after completion of a course of study is deemed to commence on the date the student begins employment or sixty days after completion of the course of study, whichever is earlier. Permission to accept employment for practical training may not be granted if the training applied for cannot be completed within the maximum period of time for which the student is eligible. In such a case, the student may, upon graduation, apply for a charge to another nonimmigrant classification which would permit the student's accepting employment.

(iv) *Alternate work/study courses.* An F-1 student enrolled in a college, university, conservatory or seminary having alternate work/study courses as a part of the regular curriculum available within the student's program of study may participate in those courses without obtaining a change of status and without obtaining permission to accept employment. Periods of actual off-campus employment which are part of a work/study program, however, are considered to be practical training. They, therefore, must be deducted from the total practical training time for which the student is eligible.

(v) *Temporary absence of F-1 student granted practical training.* An F-1 student who has been granted permission to accept employment for practical training and who departs from the United States temporarily, may be readmitted for the remainder of the authorized period indicated on the student's Form I-20 ID copy. The student must be returning to the United States to perform the authorized practical training. A student may not be readmitted to begin practical training which was not authorized prior to the student's departure from the United States.

(11) *Decision on application for extension, permission to transfer to another school, or permission to accept or continue off-campus employment or practical training.* The district director shall notify the applicant of the decision and, if the application is denied, of the reason or reasons for the denial. The applicant may not appeal the decision.

(12) *Reinstatement to student status*—(i) *General.* A district director may consider reinstating to F-1 student status an alien who was admitted to the United States as, or whose status was changed to that of, an F-1 student and who has overstayed the authorized period of stay or who has otherwise violated the conditions of his or her status only if the student—

(A) Establishes to the satisfaction of the district director that the violation of status resulted from circumstances beyond the student's control or that failure to receive reinstatement to lawful F-1 status would result in extreme hardship to the student;

(B) Makes a written request for reinstatement accompanied by a properly completed Form I-20A-B from the school the student is attending or intends to attend and the student's Form I-20 ID copy;

(C) Is currently pursuing, or intending to pursue, a full course of study at the school which issued the Form I-20A-B;

(D) Has not been employed off-campus without authorization, or, as a fulltime student, has continued on-campus employment pursuant to the terms of a scholarship, fellowship, or assistantship or other on-campus employment which did not displace a United States resident after the expiration of the authorized period of stay; and

(E) Is not deportable on any ground other than section 241(a)(2) or (9) of the Act.

(ii) *Decision.* If the district director reinstates the student, the district director shall endorse Form I-20B and the student's Form I-20 ID copy to indicate that the student has been reinstated, return the Form I-20 ID copy to the student, and forward Form I-20B with Form I-20A to the Service's processing center for file updating. The processing center shall forward Form I-20B to the school which the student is attending or intends to attend to notify the school of the student's reinstatement. If the district director does not reinstate the student, the student may not appeal that decision.

(13) *School code suffix on Form I-20A-B* . Each school system, other than an elementary or secondary school system, approved prior to August 1, 1983 for attendance by F-1 students must assign permanent consecutive numbers to all schools within its system. The number of the school within the system which an F-1 student is attending or intends to attend must be added as a three-digit suffix following a decimal point after the school file number on Form I-20A-B (e.g. .001). If an F-1 student is attending or intends to attend an elementary or secondary school in a school system or a school which is not part of a school system, a suffix consisting of a decimal point followed by three zeros must be added after the school file number on Form I-20A-B. The Service will assign school code suffixes to those schools it approves beginning August 1, 1983. No Form I-20A-B will be accepted after August 1, 1983 without the appropriate three-digit suffix.

(g) *Representatives to international organizations*—(1) *General.* The determination by a consular officer prior to admission and the recognition by the Secretary of State subsequent to admission is evidence of the proper classification of a nonimmigrant under section 101(a)(15)(G) of the Act. An alien defined in section 101(a)(15)(G)(v) of the Act may be admitted for an initial period of not more than three years, and may be granted extensions of temporary stay in increments of not more than two years. Every other alien defined in section 101(a)(15)(G) of the Act shall be admitted for such period of time as he/she continues to be so recognized by the Secretary of State.

(2) *Employment.* The spouse, unmarried dependent son, or unmarried dependent daughter habitually residing with an officer or employee of an international organization, classified as a G-4 nonimmigrant under section 101(a)(15)(G)(iv) of the Immigration and Nationality Act, may be granted permission to accept or continue employment in the United States if an application to do so has first been favorably recommended by an authorized representative of the Department of State and approved by the District Director of this Service as indicated below. To apply, the spouse or unmarried dependent son or unmarried dependent daughter shall first submit form I-566 to the Visa Office of the Department of State, or to the United States Mission to the United Nations if the principal G-4 alien is employed by the United Nations. The form shall be accompanied by a certification by the international organization that the applicant is the spouse or unmarried dependent son or unmarried dependent daughter of an officer or employee of that organization. The applicant shall also submit with the application a statement from the prospective employer describing the position and salary offered, the duties of the position and verification that the applicant possesses the necessary qualifications for the position. The application may be approved if both the authorized representative of the Department of State and the District Director of this Service at New York (if the principal alien is working for the United Nations) or at Washington, D.C. are satisfied that:

(i) Both the principal alien and the applicant desiring employment are maintaining G-4 status; (ii) the proposed employment is not in an occupation listed in the Department of Labor schedule B (20 CFR Part 656) or otherwise determined by the Department of Labor to be one for which there is an oversupply of qualified U.S. workers in the area of proposed employment, except in the case of the employment of an unmarried dependent son or unmarried dependent daughter in G-4 status who is a full-time student, if the employment is part time, consisting of not more than 20 hours per week and/or if it is temporary employment of not more than 12 weeks at a time during school holiday periods; provided that if a G-4 alien was authorized to accept full-time employment in a schedule B occupation prior to the effective date of this regulation, he/she may continue in that employment for a period of 2 years following the effective date of this regulation; and (iii) the proposed employment would not be contrary to the interests of the United States. Employment of G-4 aliens who have criminal records, or who have violated the immigration and nationality laws or regulations, or who worked illegally, or who cannot establish that they paid income taxes on income from previous U.S. employment may be considered contrary to the interests of the United States. However, a G-4 alien who is working without authorization on the effective date of this regulation must apply for authority to continue that work within 90 days of the effective date of this regulation. He/she must comply with the terms of this regulation in all respects except for the provision relating to illegal employment and the fact of such illegal employment will not be construed against him/her in considering that application for employment. Permission to accept employment may not be granted to G-4 spouses or unmarried dependents where the principal alien will be stationed in this country for a definite period of 6 months or less. Permission to accept or continue employment under this section shall be granted in increments of not more than 2 years each. There shall be no appeal from a denial of permission to accept or continue employment under this section. The Service will inform the G-4 applicant by letter whether his/her application has been granted or denied, and if denied, of the reasons therefor. When an application is approved, the Service shall inform the Internal Revenue Service and Department of Labor.

(h) *Temporary employees*—(1) *Petitions.* Any alien defined in section 101(a)(15)(H) of the Act must be the beneficiary of an approved or extended visa petition filed on Form I-129B. The petition must be accompanied by the evidence listed in parts (2), (3), or (4) of this paragraph. The petitioner need not be a United States resident.

(i) *Jurisdiction.* An employer shall file the petition and supporting documents with the district director having administrative jurisdiction over the place in the United States where the beneficiary will perform services or receive training. If the services will be performed or the training will be received in more than one location in the United States, the petition must be filed with a Service office having jurisdiction over at least one of those areas.

(ii) *Multiple beneficiaries.* An employer may include more than one beneficiary in an H petition if the beneficiaries will be performing the same type of service or receiving the same type of training, applying for visas at the same consulate, and performing services or receiving training in the same Service district.

(iii) *Change in employment or training.* If an alien in the United States desires to perform temporary service or training for another petitioner, the new employer must file a new petition on Form I-129B and the petition must accompany an application of an extension of stay, Form I-539. If the new petition is approved, an extension of stay may be granted for the validity of the approved visa petition.

(2) *Petition for alien of distinguished merit and ability*—(i) *General.* A petitioner seeking to accord an alien a classification under section 101(a)(15)(H)(i) of the Act shall annex to the petition documentation, certifications, affidavits, degrees, diplomas, writings, reviews, and any other evidence attesting to the fact that the beneficiary is a person of distinguished merit and ability and that the services the beneficiary is to perform require a person of such merit and ability. School records, diplomas, and similar documentation submitted must reflect periods of attendance, courses of study, and similar pertinent data. Affidavits submitted by present or former employers or recognized experts certifying to the expertise of the beneficiary shall be in sufficient detail to be self-explanatory concerning the beneficiary's experience and ability, and must set forth the manner in which the affiant acquired such information. Copies of any written contracts between the petitioner and beneficiary, or a summary of the verbal contract or agreement under which the beneficiary will be employed if there is no written contract, shall also be annexed to the petition.

(ii) *Entertainers.* In determining whether an alien entertainer may be considered to be of distinguished merit and ability or whether the services to be performed are of an exceptional nature requiring a person of distinguished merit and ability within the meaning of section 101(a)(15)(H)(i) of the Act, the district director shall give consideration but shall not be limited to evidence of the following factors, and where necessary may require the submission of evidence in support of all or any of these factors: whether the alien has performed and will perform as a star or featured entertainer, as evidenced by playbills, critical reviews, advertisements, publicity releases, averments by the petitioner, and contracts; the acclaim which the entertainer has achieved, as evidenced by reviews in newspapers, trade journals, and magazines; the reputation of theaters, concert halls, night clubs, and other establishments in which the entertainer has appeared and will appear; the reputation of repertory companies, ballet groups, orchestras, or other productions in which he has performed; the extent and number of commercial successes of his performances, as evidenced by such indicia as box office grosses and record sales reported in trade journals and other publications; the salary and other remuneration he has commanded and now commands for his performances, as evidenced by contracts; whether the alien has been the recipient of national, international, or other significant awards for his performances; the opinions of unions, other organizations, and recognized critics or other experts in the field in which the alien is engaged; whether previous petitions filed in behalf of the alien seeking his services in a similar capacity have been properly approved by the Service and, if so, whether there have been any changes in circumstances affecting the alien's classifiability as a person of distinguished merit and ability. When adjudicating a petition to accord classification under section 101(a)(15)(H)(i) of the Act to an alien entertainer, the district director may consult unions, other organizations, and recognized critics and other experts in the relating entertainment field. Such consultation shall be for the purpose of obtaining the advisory opinion of the organization or person consulted with regard to the qualifications of the alien and the nature of the Services to be performed by the alien. The advisory opinion shall be submitted in writing, and shall include a detailed recitation of the facts and data considered in rendering the opinion, except that it shall be furnished orally, subject to later confirmation in writing, when requested in a case deemed by the district director to be of an emergent nature; signed by a duly authorized and responsible official of any union or other organization consulted, and submitted to the district director on or before the date fixed by him, which shall not exceed 15 days from the date on which the opinion was requested.

(iii) *General documentary requirements for H-1 physicians.* A petitioner seeking to have a physician classified under section 101(a)(15)(H) (i) of the Act shall attach to the petition satisfactory evidence that the physician has a full and unrestricted license to practice medicine in a foreign state or has graduated from a medical school in the United States or in a foreign state.

(iv) *H-1 classification for alien graduates of foreign medical schools.* A petitioner seeking to have a physician who graduated from a medical school in a foreign state classified under section 101(a)(15)(H)(i) of the Act must establish that the beneficiary is coming to the United States primarily to teach or conduct research, or both, at or for a public or nonprofit private educational or research institution or agency at the invitation of the institution or agency. The petitioner must also submit documents which establish that any patient care activities by the beneficiary are incidental to the physician's teaching or research. A physician who graduated from a medical school in a foreign state who is of national or international renown in the field of medicine is exempt from this requirement.

(v) *H-1 and H-2 classification for alien graduates of United States medical schools.* The term "graduates of a medical school" as defined in section 101(a)(41) of the Act means aliens who have graduated from medical schools in a foreign state, who have qualified to practice medicine in a foreign state, or who have graduated from United States-accredited medical schools abroad. An alien graduate of a medical school in the United States who is in all respects qualified for nonimmigrant classification under section 101(a)(15)(H)(i) or (ii) of the Act is eligible for that classification in order to participate in a medical residency in the United States, and is also eligible for that classification in order to perform any other services as a member of the medical profession, including services primarily involving direct patient care.

(vi) *Nurses.* A petitioner seeking to accord a nurse a classification as a nonimmigrant under section 101 (a)(15)(H)(i) of the Act shall attach to the petition (Form I-129B)-(A) Evidence that the beneficiary has obtained a full and unrestricted license to practice professional nursing in the country where the beneficiary obtained nursing education, or evidence that the education was obtained in the United States or Canada; (B) evidence that the beneficiary has passed the examination given by the Commission on Graduates of Foreign Nursing Schools, Philadelphia, Pa. 19104, or evidence that the beneficiary has obtained a full and unrestricted license to practice professional nursing in the state of intended employment; and (C) a statement by the petitioner certifying that the beneficiary is fully qualified and eligible under the laws governing the place of intended employment to engage in the practice of professional nursing immediately upon admission to the United States, and that under those laws the petitioner is authorized to employ the beneficiary to perform services as a professional nurse. If the laws governing the place where the services will be performed place any limitations on the services to be rendered by the beneficiary, the statement should contain details as to the limitations. The district director shall consider any limitations in determining whether the services which the beneficiary would perform are of the exceptional nature required by the Act.

(vii) *Accompanying aliens.* Managers, trainers, musical accompanists, and other persons determined by the district director to be necessary for successful performance by the beneficiary of a petition approved for classification under section 101(a)(15)(H)(i) of the Act may also be accorded this classification if included in the same or a separate petition. The petitioner must establish that accompanying aliens possess unique qualities, experience, or knowledge of the performance as to render success of the performance dependent upon their participation.

(3) *Petition for alien to perform temporary service or labor.*—(i) *Labor certifications (except Guam).* Every petitioner must attach to every nonimmigrant visa petition to classify an alien under section 101(a)(15)(H)(ii) of the Act, except for employment on Guam, either:

(A) A certification from the Secretary of Labor or the Secretary's designated representative stating that qualified persons in the United States are not available and that the employment of the beneficiary will not adversely affect wages and working conditions of workers in the United States similarly employed; or

(B) A notice that such certification cannot be made. If there is attached to the petition a notice from the Secretary of Labor or the Secretary's designated representative that certification cannot be made, the petitioner shall be permitted to present countervailing evidence that qualified persons in the United States are not available and that the employment policies of the Department of Labor have been observed. All such evidence submitted will be considered in the adjudication of the petition.

(ii) *Labor certifications, Guam.* Every petitioner must attach to every nonimmigrant visa petition to classify an alien under section 101(a)(15)(H)(ii) of the Act for employment of Guam either:

(A) A certification from the Governor of Guam, or the Governor's designated representative within the Territorial Government, stating that qualified residents in the United States are not available to perform the required services and that the employment of a nonimmigrant alien will not adversely affect the wages and working conditions of United States resident workers who are similarly employed on Guam; or

(B) A notice detailing the reasons why the certification required in paragraph (h)(3)(ii)(A) of this section cannot be made. If there is attached to the petition a notice from the Governor of Guam or the Governor's designated representative that certification cannot be made, the petitioner shall be permitted to present countervailing evidence that qualified persons in the United States are not available. All such evidence submitted will be considered in the adjudication of the petition.

(iii) *Criteria for Guam labor certifications.* The Governor of Guam shall establish systematic methods for determining the prevailing wage rates and working conditions for individual occupations of Guam and for making determinations as to availability of qualified United States residents. Wage and working condition determinations need only be made for those occupations where a prospective employer requests a certification to file with a nonimmigrant visa petition based on section 101(a)(15)(H)(ii) of the Act. The system to determine wages and working conditions must provide for consideration of wage rates and employment conditions for occupations in both the private and public sectors, in Guam and/or in the United States (as defined in section 101(a)(38) of the Act), and may not consider wages and working conditions outside of the United States. If the systems will include utilization of advisory opinions and consultations, any officially sanctioned group must reflect a balance of the interests of the private and public sectors, government, unions and management. All aspects of the systems must be appropriate to carry out the purposes of and be consistent with the Immigration and Nationality Act. The system must require that the prospective employer:

(A) Advertise the availability of the position for a minimum of 3 consecutive days in the newspaper of largest daily circulation on Guam;

(B) Place a job offer with an appropriate agency of the Territorial Government which operates as a job referral service to the unemployed at least 30 days in advance of the need for the services to commence;

(C) Report to the appropriate agency or Governor's designated representative the names of all United States resident workers who applied for the position, indicating those hired or the job-related reasons for not hiring;

(D) Offer all special considerations to all United States resident workers that the employer provides to nonimmigrant alien workers, such as the payment of transportation expenses;

(E) Meet the prevailing wage rates and working conditions determined under the wages and working conditions system by the Governor or his designated representative; and

(F) Agree to meet all Federal and Territorial requirements relating to employment, such as nondiscrimination, occupational safety, and minimum wage requirements.

(iv) *Approval and publication of employment systems on Guam.* The Commissioner of Immigration and Naturalization must approve the system to determine prevailing wages and working conditions and the system to determine availability of United States resident workers and any future modifications of the systems prior to implementation. If the Commissioner, in consultation with the Secretary of Labor, finds the systems or modified systems meet the requirements of this subsection, the Commissioner shall publish them in the FEDERAL REGISTER and the Governor shall publish them as a public record in Guam. The Governor shall notify the Commissioner of all determinations under the wages and working condition system, including the specific data used in the computations. This information must be submitted quarterly beginning on the first day following the third full month after approval of the wages and working conditions system.

(v) *Invalidation of temporary labor certification issued by the Governor of Guam.*—(A) *General.* A temporary labor certification issued by the Governor of Guam or the Governor's designated representative may be invalidated by a district director if it is determined by the district director or a

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court of law that the certification request involved fraud or willful misrepresentation. A temporary labor certification can also be invalidated if the district director determines that the certification was improvidently issued.

(B) *Notice of intent to invalidate.* If the district director intends to invalidate a temporary labor certification, a notice of intent shall be served upon the applicant employer, detailing the reasons for the intended invalidation. The applicant employer shall have 10 days in which to file a written response in rebuttal of the notice of intent. The district director shall consider all evidence submitted upon rebuttal in reaching a decision.

(C) *Appeal of invalidation.* An applicant employer may appeal the invalidation of a temporary labor certification in accordance with Part 103 of this chapter.

(vi) *U.S. Virgin Islands.* After September 29, 1982, visa petitions filed under section 101(a)(15)(H)(ii) of the Act for employment in the U.S. Virgin Islands may be approved only for entertainers or athletes for periods not to exceed 45 days.

(vii) *Multiple beneficiaries.* When the petitioner seeks the services of more than one beneficiary and all the beneficiaries are not included in a single certification, a separate visa petition must be submitted for the beneficiary or beneficiaries covered in each certification.

(viii) *Statement of need.* A statement shall be furnished by the petitioner with the visa petition, describing in detail the situation or conditions which make it necessary to bring the alien to the United States and whether the need is temporary, seasonal, or permanent. If the need is temporary or seasonal, the statement shall indicate whether the situation or conditions are expected to be recurrent.

(4) *Petition for alien trainee*—(i) *General.* In addition to purely industrial establishments, an individual, organization, firm, or other trainer may petition for nonimmigrant trainees on Form I-129B for the purpose of giving instruction or training in agriculture, commerce, finance, government, transportation, and the professions. However, this does not apply to trainees coming to receive graduate medical education or training.

(ii) *Productive employment.* The source of any remuneration received by a trainee and whether or not any benefit will accrue to the petitioner are not material, but a trainee shall not be permitted to engage in productive employment if such employment will displace a United States resident. A hospital approved by the American Medical Association or the American Osteopathic Association for either an internship or residence program may petition to classify as a trainee a medical student attending a medical school abroad if he will engage in employment as an extern during his medical school vacation.

(iii) *Description of training.* There shall be attached to each petition for a trainee a statement describing the kind of training to be given and setting forth the proportion of time that will be devoted to productive employment; the number of hours that will be spent respectively in classroom instruction, and in on-the-job training without supervision; the position or duties for which this training will prepare him; the reason why such training cannot be obtained in the alien's country, and why it is necessary for the alien to be trained in the United States.

(iv) *Nurses.* A petitioner may seek a classification under section 101(a)(15)(H)(iii) of the Act or a physician or nurse who is not qualified for classification under section 101(a)(15)(H)(i) of the Act, who is coming to the United States for training in furtherance of her/his career abroad in nursing. The petitioner shall attach to the petition evidence that the beneficiary has obtained a full and unrestricted license to practice professional nursing in the country where nursing education, or that such education was obtained in the United States or Canada; also, a statement from the petitioner certifying that to the best of the petitioner's information and belief the beneficiary is fully qualified under the laws governing the place where the training will be received to engage in such training, and that under those laws the petitioner is authorized to give the beneficiary the desired training.

(5) *Certification of documents by attorneys.* A copy of a document submitted in support of a visa petition filed pursuant to section 214(c) of the Act and § 214.2(h) may be accepted, though unaccompanied by the original, if the copy bears a certification by an attorney, typed or rubber-stamped in the language set forth in § 204.2(j) of this chapter. However, the original document shall be submitted, if submittal is requested by the Service.

(6) *Approval of petition*—(i) *General.* In adjudicating the petition, the district director shall consider all the evidence submitted, and any other evidence as he may independently require or obtain to assist his adjudication. The district director shall notify the petitioner on Form I-171C of the approval of the petition. An approved petition for an alien classified under section 101(a)(15)(H)(i) of the Act is valid for the period of established need for the beneficiary's temporary service but not to exceed two years. An approved petition for an alien classified under section 101(a)(15)(H)(iii) of the Act is valid for the documented length of the approved training program. If a certification by the Secretary of Labor or his designated representative is attached to a petition to accord an alien a classification under section 101(a)(15)(H)(ii) of the Act, the approval of the petition will not be valid beyond the date to which the certification is valid. When the certification does not state a validity period, approval of the petition will not exceed 1 year from the date on which the certification was issued.

(ii) *Spouse and dependents.* The spouse and minor children of the beneficiary are entitled to nonimmigrant H classification if accompanying or following to join the beneficiary in the United States. Neither the spouse nor children may accept employment unless they are the beneficiaries of an approved petition filed in their behalf and have been granted a nonimmigrant classification authorizing their employment.

(7) *Denial of petition*—(i) *Notice of intent.* Only when an adverse decision is proposed on the basis of evidence not submitted by the petitioner, shall the district director notify the petitioner of the intent to deny the petition and the basis for the denial. The petitioner may inspect and rebut the evidence and will be granted a period of 10 days from the date of the notice in which to do so. Any rebuttal material will be considered in making a final decision.

(ii) *Notice of denial.* The petitioner will be notified of the decision, the reasons for the denial, and the right to appeal under Part 103 of this chapter. A denial decision by the district director will set forth the pertinent facts adduced from the evidence considered and give the specific reasons for the decision in the light of the facts and relating provisions of section 101(a)(15)(H) of the Act.

(8) *Revocation of approval of petitions*—(i) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner dies, goes out of business, or files a written withdrawal of the petition. When it comes to the attention of the district director that the approval has been automatically revoked, the district director shall promptly notify the petitioner of the revocation by letter.

(ii) *Revocation on notice.* The approval of a petition may be revoked if the beneficiary is no longer employed by the petitioner in the same capacity as specified in the petition or if the beneficiary is no longer receiving training as specified in the petition. The approval may also be revoked if it is determined that the statement of facts contained in the petition was not true and correct. If the district director finds that any of the above conditions exist, a notice of intent to revoke will be sent to the petitioner. The petitioner may submit evidence in rebuttal within 10 days from the date of the notice. Any rebuttal material will be considered in making the final decision. The petitioner may appeal a revocation on notice to the regional commissioner under Part 103 of this chapter.

(9) *Admission.* A beneficiary may apply for admission to the United States only during the validity period of the petition. The authorized period of the beneficiary's admission will not

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exceed the date of validity of the petition.

(10) *Extension of stay.* An extension may be authorized in increments of not more than 12 months each under the same terms and conditions that apply to admission. If maintaining status, the beneficiary may apply for an extension for the validity period of the approved visa petition by submitting Form I-539. An application for an extension of stay on behalf of a group of beneficiaries covered by the same original petition must be filed on Form I-539 by each individual alien, but only one Form I-129B for extension of visa petition validity is required. In the case of an extension of stay for an alien ensemble performing as a group, only one Form I-539 is required with an attached list of beneficiaries. A change in the previously authorized employment or training requires the filing of a new petition by the prospective employer or trainer and the filing of an I-539 by the beneficiary. The forms I-539 and I-129B may be filed concurrently. For an alien defined in section 101(a)(15)(H)(ii) of the Act, the application for extension of stay must be accompanied by a labor certification or a notice that the certification cannot be made, and the alien shall not be granted an extension which would result in an unbroken stay in the United States for more than 3 years. An application for an alien athlete or entertainer, admitted under section 101(a)(15)(H)(ii) of the Act to perform services in the United States Virgin Islands, cannot be approved for extension of stay beyond a total of 45 days. There is no appeal from the denial of an alien's request for an extension of stay filed on Form I-539.

(11) *Effect of strike.* (i) A petition to classify an alien as a nonimmigrant as defined in section 101(a)(15)(H) of the Act shall be denied if the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be employed or trained and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizen or lawful resident workers.

(ii) If a petition has been approved, but the beneficiary has not yet entered the United States to take up the approved employment or training, and the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and at the place the beneficiary is to be employed or trained, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizens or lawful permanent resident workers, the approval of the petition is automatically suspended and the application for admission on the basis of the petition shall be denied.

(iii) If a petition has been approved, and the beneficiary has entered the United States to take up the employment or training, if the beneficiary is not an "employee" as defined in the National Labor Relations Act (29 U.S.C.) 152(3)), and the Secretary of Labor or his designee certifies to the Commissioner of Immigration and Naturalization or his designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation and place of employment or training, and that the employment or training of the beneficiary would adversely affect the wages and working conditions of U.S. citizens or lawful permanent resident workers, the approval of the petition is automatically suspended.

(iv) If a petition has been approved, the beneficiary has entered the United States to take up employment, and if the beneficiary is an "employee" within the definition of the NLRA; the existence of a strike in the occupation at the place of employment shall result in suspension of the beneficiary's authorization to work, unless the employer establishes to the satisfaction of the Secretary of Labor or his designee, who in turn certifies to the Commissioner of Immigration and Naturalization or his designee, that less than 30 percent of the work force in the occupation at the place of employment are U.S. citizens or lawful permanent resident workers, provided that the Secretary of Labor or his designee also certifies that the strike has been authorized by a majority of such U.S. citizen or lawful permanent resident workers who voted, or a majority of such workers are participating in the strike.

(v) As used in this section, "place of employment" means wherever the employer or a joint employer does business.

(12) *Extension of visa petition validity.* A visa petition extension may be authorized in increments of not more than 12 months each, under the same terms and conditions that applied to the original approval. If there is no change in the previously approved visa petition, an extension may be requested by submitting Form I-129B. Supporting documents are not required unless requested by the Service.

(13) *Special classes.* The services of an entertainer beneficiary shall be restricted to the activity, area, and employer specified in the approved petition. Any engagement not specified in the original petition requires a new petition. A new petition is also required if the entertainer's services are engaged by a new employer of by a new agent or are to be performed in another area, except that a new petition is not required for the appearance of an alien performer on a bona fide charity show without compensation; provided, the alien is already in the United States under an approved visa petition. A show is not considered a "bona fide charity show" within the meaning of this paragraph if any of the musicians, entertainers, or other performers receive compensation, including reimbursement for expenses, for their performance. A petition is not required for an appearance, interview, or demonstration, if without remuneration, by any nonimmigrant alien who is not an entertainer by occupation. A separate petition and fee are required for each group of variety entertainers comprising a separate and distinct act.

(14) *Use of Form I-171C.* The Service shall notify the petitioner on Form I-171C whenever a visa petition or an extension of a visa petition is approved under the H classification. The petitioner may furnish the Form I-171C to any one of the beneficiaries who desires to depart from and return to the United States within the period for which the visa petition is valid, but may not duplicate the original form received from the Service; however, additional original forms may be requested. A beneficiary who is required to present a visa for admission and whose visa will have expired before the date of his or her intended return may use Form I-171C, as stated on the form, to apply for a new or revalidated visa. If the beneficiary is exempt from the visa requirement, the beneficiary may present the original Form I-171C at the United States port of entry upon return to be considered for readmission until the expiration date of the validity of the visa petition as shown on Form I-171C.

(i) *Representatives of information media.* The admission of an alien of the class defined in section 101(a)(15)(I) of the Act constitutes an agreement by the alien not to change the information medium or his or her employer until he or she obtains permission to do so from the district director having jurisdiction over his or her residence. An alien classified as an information media nonimmigrant (I) may be authorized admission for the duration of employment.

(j) *Exchange aliens*—(1) *General.* (i) "Exchange alien" means a nonimmigrant admitted under section 101(a)(15) (J) of the Act or who acquired such status, or who acquired exchange-visitor status under the United States Information and Education Exchange Act. Any exchange alien coming to the United States as a participant in a program designated under section 101(a)(15)(J) of the Act and accompanying spouse and minor children shall not be admitted without submitting a completely executed Form IAP-66. The spouse and minor children following to join the participant shall not be admitted without a copy of current Form IAP-66 endorsed by the program sponsor indicating the expiration of stay date as shown on Form I-94. Any alien seeking to change nonimmigrant status to exchange visitor status shall file Form I-506 and attach a valid Form IAP-66.

(ii) *Admission.* The initial admission of an exchange alien, spouse, and children may not exceed the period specified on Form IAP-66, plus a period of 30 days for the purpose of travel. Regulations of the United States Information Agency published at 22 CFR 514.23 give general limitations on the length of stay of the various classes of exchange visitors. A spouse or child (J-2) may not be admitted for longer than the principal exchange alien (J-1).

(iii) *Readmission.* An exchange alien may be readmitted to the United States for the remainder of the time authorized on Form I-94, without presenting Form IAP-66, if the alien is returning from a visit solely to foreign contiguous territory or adjacent islands after an absence of less than 30 days and if the original Form I-94 is presented. All other exchange aliens must present a valid Form IAP-66. An original Form IAP-66 or copy three (the pink copy) of a previously issued form presented by an exchange alien returning from a temporary absence shall be retained by the exchange alien for re-entries during the balance of the alien's stay.

(iv) *Extensions of Stay.* If an exchange alien requires an extension beyond the initial admission period, the alien shall apply by submitting a new Form IAP-66 which indicates the date to which the alien's program is extended. The extension may not exceed the period specified on Form IAP-66, plus a period of 30 days for the purpose of travel. Extensions of stay for the alien's spouse and children require, as an attachment to Form IAP-66, Form I-94 for each dependent, and a list containing the names of the applicants, dates and places of birth, passport numbers, issuing countries, and expiration dates. An accompanying spouse or child may not be granted an extension of stay for longer than the principal exchange alien.

(v) *Employment.* The accompanying spouse and minor children of a participant may accept employment for support (including, but not limited to, customary recreational and cultural activities and related travel) of the accompanying nonparticipating spouse and minor children in the United States if authorized by the Service. Employment shall not be authorized if this income is needed to support the participant. Application to accept employment must be made to the district director having jurisdiction over the place where the participant is residing temporarily. The application for employment does not have to be in writing.

(2) *Special reporting requirement.* Each exchange alien participating in a program of graduate medical education or training shall file Form I-644 (Supplementary Statement for Graduate Medical Trainees) annually with the Service attesting to the conditions as specified on the form. The exchange alien shall also submit Form I-644 as an attachment to a completed Form IAP-66 when applying for an extension of stay.

(3) *Alien in cancelled programs.* When the approval of an exchange visitor program is withdrawn by the Director of the United States Information Agency, the district director shall send a notice of the withdrawal to each participant in the program and a copy of each such notice shall be sent to the program sponsor. If the exchange visitor is currently engaged in activities authorized by the cancelled program, the participant is authorized to remain in the United States to engage in those activities until expiration of the period of stay previously authorized. The district director shall notify participants in cancelled programs that permission to remain in the United States as an exchange visitor, or extension of stay may be obtained if the participant is accepted in another approved program and a Form IAP-66, executed by the new program sponsor, is submitted. In this case, a release from the sponsor of the cancelled program will not be required.

(4) *Eligibility requirements for section 101(a)(15)(J) classification for aliens desiring to participate in programs under which they will receive graduate medical education or training*—(i) *Requirements.* Any alien coming to the United States as an ex-

change visitor to participate in a program under which the alien will receive graduate medical education or training, or any alien seeking to change nonimmigrant status to that of an exchange visitor on Form I-506 for that purpose, must have passed parts of I and II of the National Board of Medical Examiners Examination (or an equivalent examination as determined by the Secretary of Health and Human Services), and must be competent in oral and written English, and shall submit a completely executed and valid Form IAP-66.

(ii) *Exemptions.* From January 10, 1978 until December 31, 1983, any alien who has come to or seeks to come to the United States as an exchange visitor to participate in an accredited program of graduate medical education or training, or any alien who seeks to change nonimmigrant status for that purpose, may be admitted to participate in such program without regard to the requirements stated in subparagraphs (A) and (B)(ii)(I) of section 212(j)(1) of the Act if a substantial disruption in the health services provided by such program would result from not permitting the alien to participate in the program: *Provided* that the exemption will not increase the total number of aliens then participating in such programs to a level greater than that participating on January 10, 1978.

(k) *Fiancees and fiances of United States citizens.* An alien defined in section 101(a)(15)(k) of the Act must be the beneficiary of an approved visa petition filed on Form I-129F. The petition with supporting documents shall be filed by the petitioner with the district director having administrative jurisdiction over the place where the petitioner is residing in the United States. A copy of a document submitted in support of a visa petition filed pursuant to section 214(d) of the Act and this paragraph may be accepted, though unaccompanied by the original, if the copy bears a certification by an attorney, typed or rubber-stamped in the language set forth in § 204.2(j) of this chapter. However, the original document shall be submitted, if submittal is requested by the Service. Failure on the part of the petitioner to satisfactorily establish that he has personally met and seen the beneficiary prior to filing the petition shall be given considerable weight in determining whether a bona fide marriage is intended. Without the approval of a separate petition on his behalf, a child of the beneficiary defined in section 101(b)(1) (A), (B), (C), (D), or (E) of the Act may be accorded the same nonimmigrant classification as the beneficiary if accompanying or following to join him. The petitioner shall be notified of the decision and, if the petition is denied, of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter. The approval of a petition under this paragraph shall be valid for a period of 4 months. A petition which has expired due to the passage of time may be revalidated by a district director or an American consular officer for a period of 4 months from the date of revalidation upon a finding that the petitioner and beneficiary are free to marry and intend to marry each other within 90 days of the beneficiary's entry into the United States. The approval of any petition is automatically terminated when the petitioner dies or files a written withdrawal of the petition before the beneficiary arrives in the United States.

(l) *Intra-company transferees*—(1) *Petition.* Any alien defined in section 101(a)(15)(L) of the Act must be the named beneficiary of an approved or extended visa petition filed on Form I-129B, or be assigned to a position identified in an approved blanket petition made on the same form. The petition must be accompanied by the evidence listed in paragraph (l)(1)(iii) of this section. The petitioner need not be a United States resident.

(i) *Jurisdiction.* The prospective employer must file a separate petition for each beneficiary with the district director having jurisdiction over the place in the United States where the beneficiary will perform the services. In case of a blanket petition, the petition must be filed with the district director having jurisdiction over the employer's main office in the United States. The authority to determine the individual eligibility of beneficiaries covered by blanket petitions under this section is delegated to United States consular officers.

(ii) *Definitions.* As used in this part:

(A) "Managerial capacity" means an assignment within an organization in which the employee directs the organization or a customarily recognized department or subdivision of the organization, controls the work of other employees, has the authority to hire and fire or recommend those actions as well as other personnel actions (promotion, leave authorization, etc.), and exercises discretionary authority over day-to-day operations. This does not include the first-line level of supervision unless the employees supervised are managerial or professional.

(B) "Executive capacity" means an assignment within an organization in which the employee directs the management of an organization and establishes organizational goals and policies, exercises a wide latitude of discretionary decision-making, and receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the business.

(C) "Specialized knowledge" means knowledge possessed by an individual which relates directly to the product or service of an organization or to the equipment, techniques, management, or other proprietary interests of the petitioner not readily available in the job market. The knowledge must be relevant to the organization itself and directly concerned with the expansion of commerce or it must allow the business to become competitive in the market place.

(D) "New office" means an office that has been in operation for less than one year.

(iii) *Evidence*—(A) *General.* A petitioner seeking to accord an alien classification under section 101(a)(15)(L) of the Act shall attach a statement to the petition describing the capacity in which the beneficiary will be employed in the United States. The documentary evidence must establish that the services currently performed by the beneficiary, and those to be performed in the United States, have been and will be either executive, managerial, or involve specialized knowledge. The statement must satisfy the requirement in paragraph (l)(1)(ii) of this section. If the petition indicates that the beneficiary is coming to open or to be employed in a new office in the United States, the petition must be accompanied by evidence that sufficient physical premises to house the United States operation have been secured by purchase, lease, or rental, and the petitioner has sufficient resources to remunerate the beneficiary. An individual petition is required in the case of all petitions involving new offices.

(B) *Individual petition.* A petition must be accompanied by evidence of the corporate interrelationship between the foreign company and the United States-based company in order to establish existence of the interrelationship described in section 101(a)(15)(L) of the Act. A statement explaining the temporary need for the beneficiary's services must also accompany the petition. If the beneficiary is an owner, operator, or major stockholder of the company, the petition must be accompanied by evidence that the beneficiary's services are to be used for a temporary period and also include evidence that the beneficiary will be transferred to an assignment outside the United States upon completion of the temporary services in the United States.

(C) *Blanket petitions.* A petitioner may file a blanket petition if it has transferred at least 5 "L" managerial or excecutive beneficiaries to the United States during the previous 12 months. The petition must be accompanied by evidence that this requirement has been met. The petition must also be accompanied by evidence of the corporate interrelationship of all foreign and domestic entities which the petitioner identifies in the petition and a list of the positions to which its executives or managers may be assigned in the United States. If an organization will identify more than 10 positions, the petitioner may furnish a description of its personnel structure and identify the level above which it will or may seek to transfer managers or executives. Qualified employees who are being transferred into managerial and executive positions identified in the approved blanket petition shall apply directly to an American embassy or consulate for visa issuance without being named in an individual visa petition. A beneficiary of a blanket petition may be admitted as a manager or executive with any organization or division named in the approved visa petition. When the beneficiary of a revoked petition is in the United States, a copy of the revocation shall be furnished to the alien with a date on which to depart the United States.

(2) *Certification of documents by attorneys.* A copy of a document submitted in support of a visa petition filed pursuant to section 214(c) of the Act and § 214.2(l) of this part may be accepted, without the original, if the copy bears a certification by an attorney, typed or rubber-stamped in the language set forth in § 204.2(j) of this chapter. However, the original document shall be submitted if requested by the Service.

(3) *Approval of petition*—(i) *General.* The district director shall notify the petitioner on Form I-171C upon approval of a visa petition filed on Form I-129B. An individual petition approved under this paragraph is valid for the period of established need for the beneficiary's temporary services, not to exceed three years. A blanket petition approved under this paragraph is valid for a period of three years from the date of approval of the petition. A blanket petition may be approved in whole or in part. Only those interrelationships found to qualify under section 101(a)(15)(L) of the Act shall be approved. A petitioner may utilize the services of a beneficiary in any qualifying executive or managerial position and for any company found qualified in the blanket petition.

(ii) *Spouse and dependents.* The spouse and unmarried minor children of the beneficiary are entitled to the same nonimmigrant classification and length of stay if accompanying or following to join the beneficiary in the United States. Neither the spouse nor children may accept employment unless they are the beneficiaries of an approved petition filed in their behalf and have been granted a nonimmigrant classification authorizing their employment.

(4) *Denial of petition*—(i) *General.* A petition denied in whole or in part may be appealed under Part 103 of this chapter.

(ii) *Individual petition.* If an individual petition is denied, the petitioner will be notified of the denial, the reasons for the denial, and of the right to appeal on Form I-292.

(iii) *Blanket petition.* If a blanket petition is denied in whole or in part, the petitioner shall be notified of the decision and the reasons for the denial in part resulting from a finding that some of the claimed inter-company relationships and/or positions do not qualify under section 101(a)(15)(L) of the Act. The district director shall forward the denial along with Form I-171C, Notice of Approval, when the petition is denied in part. Form I-171C shall list those inter-company relationships and positions which were found to qualify. If the decision of the district director is reversed on appeal, a new Form I-171C shall be furnished to the petitioner to reflect the changes made as a result of the appeal.

(5) *Revocation of approval of petitions*—(i) *Automatic revocation.* The approval of any petition is automatically revoked if the petitioner dies, goes out of business, or files a written withdrawal of the petition. When it comes to the attention of the district director that the approval has been automatically revoked, the district director shall promptly notify the petitioner of the revocation by letter.

(ii) *Revocation on notice.* The approval of a petition may be revoked if the ownership and control of the related businesses are altered, and the interrelationship or employment of the beneficiary no longer qualify under section 101(a)(15)(L) of the Act. The petitioner shall notify the Service of any changes in the relationships between authorized companies and any changes to the employment of the beneficiary. If the district director's review of the change finds that the inter-relationship or employment is no longer eligible within the meaning of section 101(a)(15)(L) of the Act, a notice of intent to revoke shall be sent to the petitioner. If an inter-relationship previously approved under a blanket petition is found to no longer qualify, a notice of intent to revoke only that portion of the petition affected by the determination shall be sent to the petitioner. Upon receipt of this notice, the petitioner may submit evidence in rebuttal of the reasons for the proposed revocation. The district director will consider all evidence in making the decision. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised Form I-171C shall be sent to the petitioner with the revocation notice. The petitioner may appeal a revocation on notice to the regional commissioner under Part 103 of this chapter.

(6) *Admission.* A beneficiary may apply for admission to the United States only during the validity period of the petition. The authorized period of the beneficiary's admission shall not exceed the date of validity of the petition.

(7) *Extension of stay.* An alien classified under section 101(a)(15)(L) of the Act shall apply for an extension of stay on Form I-539. The Form I-539 must be accompanied by a statement of continued need signed by an authorized company representative. Extensions of stay may be authorized in increments not to exceed 12 months for a beneficiary of an individual petition and not exceed 36 months for an alien admitted under a blanket petition authorization. No extension will be granted to exceed the validity of the approved petition. The same terms and conditions authorizing the approval of the petition and admission of the beneficiary shall apply. However, an alien admitted under the authority of an approved blanket petition may be reassigned to any business in a managerial or executive position included in the approval of the blanket petition without referral to the Service. The application for extension of stay for a beneficiary of an approved blanket petition must be filed with the Service office that approved the original visa petition. The spouse and unmarried minor children of an L-1 beneficiary may be included in the extension application and given extensions of stay to the same date as the beneficiary. A new Form I-171C shall be sent to the applicant if the extension is approved. There is no appeal from the denial of an extension of stay. Form I-129B may be filed concurrently for extension of visa petition validity.

(8) *Extension of visa petition validity.* An individual petition may be extended in increments of not more than 12 months each by submitting Form I-129B if all existing conditions in the original approval remain the same. Supporting documents are not required unless requested by the Service. A blanket petition may be extended for an additional three year period by submitting a Form I-129B with the file number of the previously approved petition. Supporting documents are not required if all existing business relationships and authorized positions remain the same. When listed organizations or positions are to be amended, a revised petition must be filed on Form I-129B. Form I-171C must list all qualifying inter-company relationships which have qualified under this part.

(9) *Labor disputes.* A petition will be denied if a strike or other labor dispute involving a work stoppage or layoff of employees is in progress in the occupation and at the place the beneficiary is to be employed. If the petition has already been approved, the approval of the beneficiary's employment is automatically suspended while the srike or other labor dispute is in progress.

(10) *Use of Form I-171C.* The Service shall notify the petitioner on Form I-171C upon approval of a visa petition filed on Form I-129B. The Form I-171C will include the name of the beneficiary or, in the case of a blanket petition, will identify the positions and organizations included in the petition. Each alien seeking a visa to occupy a position named in an approved blanket petition must submit a copy of Form I-171C with a letter from the petitioner which identifies: the position and organization from which the employee is transferring, the new organization and position to which the employee is destined, a description of the employee's actual duties and salary under both the new and former positions, and the dates and locations of previous L stays in the United States. The employer of a beneficiary named in an

individual visa petition may request the Service to issue an original form I-171C to the employee to facilitate entry into the United States for a beneficiary who does not require an nonimmigrant visa. The original Form I-171C may be retained by the beneficiary and presented for entry during the validity of the petition; provided, the beneficiary is entering or reentering the United States to resume the same employment with the same petitioner within the validity period of the petition. However, an L-1 beneficiary admitted under the authorization of a blanket petition may be readmitted even though reassigned to a different managerial or executive position or organization named on the Form I-171C. The original Form I-171C received from the Service may only be duplicated by employers who have approved blanket petitions; however, additional forms may be requested by individual petitioners.

(m) *Students in established vocational or other recognized nonacademic institutions, other than in language training programs*—(1) *Admission of student*—(i) *Eligibility for admission.* Except as provided in paragraph (m)(4) of this section, an alien seeking admission to the United States under section 101(a)(15)(M)(i) of the Act (as an M-1 student) and the student's accompanying M-2 spouse and minor children, if applicable, are not eligible for admission unless—

(A) The student presents a Certificate of Eligibility for Nonimmigrant (M-1) Student Status, Form I-20M-N, properly and completely filled out by the student and by the designated official of the school to which the student is destined and the documentary evidence of the student's financial ability required by that form; and

(B) It is established that the student is destined to and intends to attend the school specified in the student's visa unless the student is exempt from the requirement for presentation of a visa.

(ii) *Disposition of Form I-20M-N.* When a student is admitted to the United States, the inspecting officer shall forward Form I-20M-N to the Service's processing center. The processing center shall forward Form I-20N to the school which issued the form to notify the school of the student's admission.

(2) *Form I-20 ID copy.* The first time an M-1 student comes into contact with the Service for any reason, the student must present to the Service a Form I-20M-N properly and completely filled out by the student and by the designated official of the school the student is attending or intends to attend. The student will be issued a Form I-20 ID copy with his or her admission number. The student must have the Form I-20 ID copy with him or her at all times. If the student loses the Form I-20 ID copy, the student must request a new Form I-20 ID copy on Form I-102 from the Service office having jurisdiction over the school the student was last authorized to attend.

(3) *Spouse and minor children following to join student.* The M-2 spouse and minor children following to join an M-1 student are not eligible for admission to the United States unless they present, as evidence that the student is or will, within sixty days, be enrolled in a full course of study or is engaged in approved practical training, either—

(i) A properly endorsed page 4 of Form I-20M-N if there has been no substantive change in the information on the student's most recent Form I-20M since the form was initially issued; or

(ii) A new Form I-20M-N if there has been any substantive change in the information on the student's most recent Form I-20M since the form was initially issued.

(4) *Temporary absence*—(i) *General.* An M-1 student returning to the United States from a temporary absence to attend the school which the student was previously authorized to attend must present either—

(A) A properly endorsed page 4 of Form I-20M-N if there has been no substantive change in the information on the student's most recent Form I-20M since the form was initially issued; or

(B) A new Form I-20M-N if there has been any substantive change in the information on the student's most recent Form I-20M since the form was initially issued.

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(ii) *Student who transferred between schools.* If an M-1 student has been authorized to transfer between schools and is returning to the United States from a temporary absence in order to attend the school to which transfer was authorized as indicated on the student's Form I-20 ID copy, the name of the school to which the student is destined does not need to be specified in the student's visa.

(5) *Period of stay.* An alien admitted to the United States as an M-1 student is to be admitted for the period of time necessary to complete the course of study indicated on Form I-20M plus thirty days within which to depart from the United States or for one year, whichever is less. An alien granted a change of nonimmigrant classification to that of an M-1 student is to be given an extension of stay for the period of time necessary to complete the course of study indicated on Form I-20M plus thirty days within which to depart from the United States or for one year, whichever is less.

(6) *Conversion to M-1 status of students in established vocational or other recognized nonacademic institutions, other than in language training programs, who were F-1 students prior to June 1, 1982.* A student in an established vocational or other recognized nonacademic institution, other than in a language training program, who is in status as an F-1 student under section 101(a)(15)(F)(i) of the Act in effect prior to June 1, 1982 and the student's F-2 spouse and children, if applicable, are—

(i) Automatically converted to M-1 and M-2 status respectively; and

(ii) Limited to the authorized period of stay shown on their Forms I-94 plus thirty days within which to depart from the United States or to an authorized period of stay which expires one year from August 1, 1983, whichever is less.

(7) *Period of stay of student already in M-1 status.* A student in an established vocational or other recognized nonacademic institution, other than in a language training program, who is already in M-1 status and the student's M-2 spouse and children, if applicable, are limited to the authorized period of stay shown on their Forms I-94 plus thirty days within which to depart from the United States or to an authorized period of stay which expires one year from August 1, 1983, whichever is less.

(8) *Issuance of new I-94.* A nonimmigrant whose status is affected by paragraph (m)(6) or (m)(7) of this section need not present Form I-94 to the Service. Either paragraph constitutes official notification to a student whose status is affected by it of that status. The Service will issue a new Form I-94 to an alien whose status is affected by either paragraph when that alien comes into contact with the Service.

(9) *Full course of study.* Successful completion of the course of study must lead to the attainment of a specific educational or vocational objective. A "full course of study" as required by section 101(a)(15)(M)(i) of the Act means—

(i) Study at a community college or junior college, certified by a school official to consist of at least twelve semester or quarter hours of instruction per academic term in those institutions using standard semester, trimester, or quarter-hour systems, where all students enrolled for a minimum of twelve semester or quarter hours are charged full-time tuition or considered full-time for other administrative purposes, or its equivalent (as determined by the district director) except when the student needs a lesser course load to complete the course of study during the current term;

(ii) Study at a postsecondary vocational or business school, other than in a language training program except as provided in § 214.3(a)(2)(iv), which confers upon its graduates recognized associate or other degrees or has established that its credits have been and are accepted unconditionally by at least three institutions of higher learning within category (1) and (2) of § 214.3(c), and which has been certified by a designated school official to consist of at least twelve hours of instruction a week, or its equivalent as determined by the district director;

(iii) Study in a vocational or other nonacademic curriculum, other than in a language training program except as provided in § 214.3(a)(2)(iv), certified by a designated school official to consist of at least eighteen clock hours of attendance a week if the dominant part of the course of study consists of classroom instruction, or at least twenty-two clock hours a week if the dominant part of the course of study consists of shop or laboratory work; or

(iv) Study in a vocational or other nonacademic high school curriculum, certified by a designated school official to consist of class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress towards graduation.

(10) *Extension of stay*—(i) *Eligibility.* An M-1 student may be granted an extension of stay if it is established that the student—

(A) Is a bona fide nonimmigrant currently maintaining student status; and

(B) Is able to, and in good faith intends to, continue to maintain that status for the period for which the extension is granted.

(ii) *Application.* An M-1 student must apply for an extension of stay on Form I-538. A student's M-2 spouse and children desiring an extension of stay must be included in the application. A student's M-2 spouse or children are not eligible for an extension of stay unless the student is granted an extension of stay. The student must submit the application to the Service office having jurisdiction over the school the student was last authorized to attend at least fifteen days but not more than sixty days before the expiration of the student's currently authorized stay. The application must also be accompanied by the student's Form I-20 ID copy and the Forms I-94 of the student's spouse and children, if applicable.

(iii) *Period of stay.* If an application for extension of stay is granted, the student and the student's spouse and children, if applicable, are to be given an extension of stay for the period of time necessary to complete the course of study plus thirty days within which to depart from the United States or for one year, whichever is less. An M-1 student who has been compelled by illness to interrupt or reduce a course of study may be granted an extension of stay without being required to change nonimmigrant classification provided that it is established that the student will pursue a full course of study upon recovery from the illness.

(11) *School transfer*—(i) *Eligibility.* An M-1 student may not transfer to another school after six months from the date the student is first admitted as, or changes nonimmigrant classification to that of, an M-1 student unless the student is unable to remain at the school to which the student was initially admitted due to circumstances beyond the student's control. An M-1 student may be otherwise eligible to transfer to another school if the student—

(A) Is a bona fide nonimmigrant;

(B) Has been pursuing a full course of study at the school the student was last authorized to attend;

(C) Intends to pursue a full course of study at the school to which the student intends to transfer; and

(D) Is financially able to attend the school to which the student intends to transfer.

(ii) *Procedure.* An M-1 student must apply for permission to transfer between schools on Form I-538 accompanied by the student's Form I-20 ID copy and the Forms I-94 of the student's spouse and children, if applicable. The Form I-538 must also be accompanied by Form I-20M-N properly and completely filled out by the student and by the designated official of the school which the student wishes to attend. The student must submit the application for school transfer to the Service office having jurisdiction over the school the student was last authorized to attend. Sixty days after having filed an application for school transfer, an M-1 student may effect the transfer subject to approval or denial of the application. An M-1 student who transfers without complying with this regulation or whose application is denied after transfer pursuant to this regulation is considered to be out of status. If the application is approved, the approval of the transfer will be retroactive to the date of filing the application, and the student will be granted an extension of stay for the period of time necessary to complete the course of study indicated on Form I-20M plus thirty days within which to depart from the United

States or for one year, whichever is less. The adjudicating officer must endorse the name of the school to which transfer is authorized on the student's Form I-20 ID copy. The officer must also endorse Form I-20N to indicate that a school transfer has been authorized and forward it with Form I-20M to the Service's processing center for file updating. The processing center shall forward Form I-20N to the school to which the transfer has been authorized to notify the school of the action taken.

(iii) *Student who has not been pursuing a full course of study.* If an M-1 student who has not been pursuing a full course of study at the school the student was last authorized to attend desires to attend a different school, the student must apply for reinstatement to student status under paragraph (m)(16) of this section.

(12) *Change in educational objective.* An M-1 student may not change educational objective.

(13) *Employment.* Except as provided in paragraph (m)(14) of this section, M-1 students may not accept employment. A student already in M-1 status on August 1, 1983 or a student converted to M-1 status under paragraph (m)(6) of this section who was authorized off-campus employment under the regulations previously in effect, however, may continue to work until the date of expiration of the previously authorized period of employment. The M-2 spouse and children of an M-1 student may not accept employment.

(14) *Practical training*—(i) *When practical training may be authorized.* Temporary employment for practical training may be authorized only after completion of the student's course of study.

(ii) *Application.* An M-1 student must apply for permission to accept employment for practical training on Form I-538 accompanied by the student's Form I-20 ID copy. The student must submit the application to the Service office having jurisdiction over the school the student was last authorized to attend. The application must be submitted prior to the expiration of the student's authorized period of stay and not more than sixty days before nor more than thirty days after completion of the course of study. The designated school official must certify on Form I-538 that—

(A) The proposed employment is recommended for the purpose of practical training;

(B) The proposed employment is related to the student's course of study; and

(C) Upon the designated school official's information and belief, employment comparable to the proposed employment is not available to the student in the country of the student's foreign residence.

(iii) *Duration of practical training.* If permission to engage in employment for practical training is granted, the adjudicating officer shall endorse the permission on the student's Form I-20 ID copy and shall note the dates on which the practical training permission begins and ends. The student has permission to engage in employment for practical training only if and when the student receives the Form I-20 ID copy endorsed to that effect. The student may be granted one period of practical training for a period of time equal to one month for each four months during which the student pursued a full course of study, but not to exceed six months, plus an additional thirty days within which to depart from the United States. Permission to accept employment may not be granted if the training applied for cannot be completed within the maximum period of time for which the applicant is eligible.

(iv) *Temporary absence of M-1 student granted practical training.* An M-1 student who has been granted permission to accept employment for practical training and who temporarily departs from the United States, may be readmitted for the remainder of the authorized period indicated on the student's Form I-20 ID copy. The student must be returning to the United States to perform the authorized practical training. A student may not be readmitted to begin practical training which was not authorized prior to the student's departure from the United States.

(v) *Effect of strike or other labor dispute.* Authorization for all employment for practical training is automatically suspended upon certification by the Secretary of Labor or the Secretary's designee to the Commissioner of Immigration and Naturalization or the Commissioner's designee that a strike or other labor dispute involving a work stoppage of workers is in progress in the occupation at the place of employment. As used in this paragraph, "place of employment" means wherever the employer or joint employer does business.

(15) *Decision on application for extension, permission to transfer to another school, or permission to accept employment for practical training.* The district director shall notify the applicant of the decision and, if the application is denied, of the reason(s) for the denial. The applicant may not appeal the decision.

(16) *Reinstatement to student status*—(i) *General.* A district director may consider reinstating to M-1 student status an alien who was admitted to the United States as, or whose status was changed to that of, an M-1 student and who has overstayed the authorized period of stay or who has otherwise violated the conditions of his or her status only if—

(A) The student establishes to the satisfaction of the district director that the violation of status resulted from circumstances beyond the student's control or that failure to receive reinstatement to lawful M-1 status would result in extreme hardship to the student;

(B) The student makes a written request for reinstatement accompanied by a properly completed Form I-20M-N from the school the student is attending or intends to attend and the student's Form I-20 ID copy;

(C) The student is currently pursuing, or intending to pursue, a full course of study at the school which issued the Form I-20M-N;

(D) The student has not been employed without authorization; and

(E) The student is not deportable on any ground other than section 241(a)(2) or (9) of the Act.

(ii) *Decision.* If the district director reinstates the student, the district director shall endorse Form I-20N and the student's Form I-20 ID copy to indicate that the student has been reinstated, return the Form I-20 ID copy to the student, and forward Form I-20N with Form I-20M to the Service's processing center for file updating. The processing center shall forward Form I-20N to the school which the student is attending or intends to attend to notify the school of the student's reinstatement. If the district director does not reinstate the student, the student may not appeal that decision.

(17) *School code suffix on Form I-20M-N.* Each school system, other than a secondary school system approved prior to August 1, 1983 for attendance by M-1 students must assign permanent consecutive numbers to all schools within its system. The number of the school within the system which an M-1 student is attending or intends to attend must be added as a three-digit suffix following a decimal point after the school file number on Form I-20M-N (e.g. .001). If an M-1 student is attending or intends to attend a secondary school in a school system or a school which is not part of a school system, a suffix consisting of a decimal point followed by three zeros must be added after the school file number on Form I-20M-N. The Service will assign school code suffixes to those schools it approves beginning August 1, 1983. No Form I-20M-N will be accepted after August 1, 1983 without the appropriate three-digit suffix.

(n) *NATO aliens*—(1) *General.* Aliens classified as NATO-1 through NATO-4 are members of the armed forces of a country signatory to Article III of the Status of Forces Agreement (NATO). They are normally exempt from inspection under 8 CFR 235.1(c). Aliens classified as NATO-5 or -6 are civilian employees of the armed forces of a NATO member and may be authorized admission for the duration of employment and assignment with the NATO member in the United States. Aliens classified as NATO-7 who are employed by NATO-1 through NATO-4 aliens may be admitted for duration of status; if employed by NATO-5 or -6 aliens, admission may be authorized for not more than two years.

(2) *Extensions of Stay.* Any alien classified as a NATO-7 as the employ-

ee of a NATO-5 or -6 may be granted extensions of stay in increments of not more than one year.

(3) *Employment.* The dependents of an alien classified NATO-1 through NATO-7 may request authorization for employment if the state of their nationality has a reciprocal employment agreement with the Department of State. The names of the foreign states which have reciprocal employment agreements are available from the Department of State, Office of Consular Affairs, and the District Offices of the Service.

(Title VI of the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484; 90 Stat. 2303); secs. 103 and 214, Immigration and Nationality Act (8 U.S.C. 1103 and 1184))

[38 FR 35425, Dec. 28, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 214.2, see the List of CFR Sections Affected in the Finding Aids section in this volume.

§ 214.3 Petitions for approval of schools.

(a) *Filing petition*—(1) *General.* A school or school system seeking approval for attendance by nonimmigrant students under sections 101(a)(15)(F)(i) or 101 (a)(15)(M)(i) of the Act, or both, shall file a petition on Form I-17 with the district director having jurisdiction over the place in which the school or school system is located. Separate petitions are required for different schools in the same school system located within the jurisdiction of different district directors. A petition by a school system must specifically identify by name and address those schools included in the petition. The petition must also state whether the school or school system is seeking approval for attendance of nonimmigrant students under section 101(a)(15)(F)(i) or 101(a)(15)(M)(i) of the Act or both.

(2) *Approval for F-1 or M-1 classification, or both*—(i) *F-1 classification.* The following schools may be approved for attendance by nonimmigrant students under section 101(a)(15)(F)(i) of the Act:

(A) A college or university, i.e., an institution of higher learning which awards recognized bachelor's, master's doctor's or professional degrees.

(B) A community college or junior college which provides instruction in the liberal arts or in the professions and which awards recognized associate degrees.

(C) A seminary.

(D) A conservatory.

(E) An academic high school.

(F) An elementary school.

(G) An institution which provides language training, instruction in the liberal arts or fine arts, instruction in the professions, or instruction or training in more than one of these disciplines.

(ii) *M-1 classification.* The following schools are considered to be vocational or nonacademic institutions and may be approved for attendance by nonimmigrant students under section 101(a)(15)(M)(i) of the Act:

(A) A community college or junior college which provides vocational or technical training and which awards recognized associate degrees.

(B) A vocational high school.

(C) A school which provides vocational or nonacademic training other than language training.

(iii) *Both F-1 and M-1 classification.* A school may be approved for attendance by nonimmigrant students under both sections 101(a)(15)(F)(i) and 101(a)(15)(M)(i) of the Act if it has both instruction in the liberal arts, fine arts, language, religion, or the professions and vocational or technical training. In that case, a student whose primary intent is to pursue studies in liberal arts, fine arts, language, religion, or the professions at the school is classified as a nonimmigrant under section 101(a)(15)(F)(i) of the Act. A student whose primary intent is to pursue vocational or technical training at the school is classified as a nonimmigrant under section 101(a)(15)(M)(i) of the Act.

(iv) *English language training for a vocational student.* A student whose primary intent is to pursue vocational or technical training who takes English language training at the same school solely for the purpose of being able to understand the vocational or technical course of study is classified as a nonimmigrant under section 101(a)(15)(M)(i) of the Act.

(b) *Supporting documents.* A petitioning school or school system owned and operated as a public educational institution or system by the United States or a State or a political subdivision thereof shall submit a certification to that effect signed by the appropriate public official who shall certify that he is authorized to do so. A petitioning private or parochial elementary or secondary school system shall submit a certification signed by the appropriate public official who shall certify that he is authorized to do so to the effect that it meets the requirements of the State or local public educational system. Any other petitioning school shall submit a certification by the appropriate licensing, approving, or accrediting official who shall certify that he is authorized to do so to the effect that it is licensed, approved, or accredited. In lieu of such certification a school which is recognized by a State-approving agency as an "Educational institution" for study for veterans under the provisions of Pub. L. 550 (82d Congress) may submit a statement of recognition signed by the appropriate official of the State approving agency who shall certify that he is authorized to do so. A charter shall not be considered a license, approval or accreditation. Except in connection with a petition submitted by a school or school system owned and operated as a public educational institution or system by the United States or a State or a political subdivision thereof, or by a school listed in the current U.S. Department of Education publications, "Accredited Postsecondary Institutions and Programs" or "Education Directory, Colleges and Universities," or by a secondary school operated by or as part of a school so listed, a school catalog, if one is issued, shall also be submitted with each petition. If not included in the catalogue, or if a catalogue is not issued, the school shall furnish a written statement containing information concerning the:

(1) Size of its physical plant; (2) nature of its facilities for study and training; (3) educational, vocational or professional qualifications of the teaching staff; (4) salaries of the teachers; (5) attendance and scholastic grading policy; (6) amount and character of supervisory and consultative services available to students and trainees; and (7) finances (including a certified copy of accountant's last statement of school's net worth, income, and expenses). If the petitioner is a vocational, business, or language school, or American institution of research recognized as such by the Attorney General, it must submit evidence that its courses of study are accepted as fulfilling the requirements for the attainment of an educational, professional, or vocational objective, and are not avocational or recreational in character. If the petitioner is an institution of higher education and is not within category (1) or (2) of paragraph (c) of this section, it must submit evidence that it confers upon its graduates recognized bachelor, master, doctor, professional, or divinity degrees, or if it does not confer such degrees that its credits have been and are accepted unconditionally by at least three institutions of higher learning within category (1) or (2) of paragraph (c) of this section. If the petitioner is an elementary or secondary school and is not within category (1) or (3) of paragraph (c) of this section, it must submit evidence that attendance at the petitioning institution satisfies the compulsory attendance requirements of the State in which it is located and that the petitioning school qualifies graduates for acceptance by schools of higher educational level within category (1), (2), or (3) of paragraph (c) of this section.

(c) *Consultation with U.S. Department of Education.* The U.S. Department of Education has been consulted by the Service and has advised that each of the following is considered an established institution of learning or other recognized place of study, is operating a bona fide school, and has the necessary facilities, personnel, and finances to instruct in recognized courses: (1) A school (or school system) owned and operated as a public educational institution by the United States or a State or political subdivision thereof; (2) a school listed in the current U.S. Department of Education publications, "Accredited Postsecondary Institutions and Programs" or "Education Directory, Colleges and Universities"; or (3) a secondary school operated by or as part of an institution of higher learning listed in the current U.S. Department of Education publications, "Accredited Postsecondary Institutions and Programs" or "Education Directory, Colleges and Universities." Before a decision is made on a petition filed by any other school, the district director shall consult the U.S. Department of Education by transmitting to that Department the petition, supporting documents and any report of interview or other inquiry conducted by the Service, with a request for advice as to whether the petitioner is an established institution of learning or other recognized place of study, is operating a bona fide school, and has the necessary facilities, personnel, and finances to instruct in recognized courses.

(d) *Interview of petitioner.* An authorized representative of the petitioner shall appear in person before an immigration officer prior to the adjudication of the petition to be interviewed under oath concerning the eligibility of the school for approval. An interview may be waived by the district director if the school is within the category (1), (2), or (3) of paragraph (c) of this section.

(e) *Approval of petition*—(1) *Eligibility.* To be eligible for approval, the petitioner must establish that—

(i) It is a bona fide school;

(ii) It is an established institution of learning or other recognized place of study;

(iii) It possesses the necessary facilities, personnel, and finances to conduct instruction in recognized courses; and

(iv) It is, in fact, engaged in in-struction in those courses.

(2) *General.* Upon approval of a petition, the district director shall notify the petitioner. The approval of a school for attendance by nonimmigrant students is valid only as long as the school continues to operate in the manner represented on the petition. The approval is also valid only for the type of student, i.e., F-1 or M-1 or both, specified in the approval notice. The approval may be withdrawn in accordance with the provisions of §214.4.

(f) *Denial of petition.* If the petition is denied, the petitioner shall be notified of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter.

(g) *Recordkeeping and reporting requirements*—(1) *Recordkeeping requirements.* An approved school must keep records containing certain specific information and documents relating to each F-1 or M-1 student to whom it has issued a Form I-20A or I-20M while the student is attenidng the school and until the school notifies the Service, in accordance with the requirements of paragraph (g)(2) of this section, that the student is not pursuing a full course of study. The school must keep a record of having complied with the reporting requirements for at least one year. If a student who is out of status is restored to status, the school the student is attending is responsible for maintaining these records following receipt of notification from the Service that the student has been restored to status. The designated school official must make the information and documents required by this paragraph available to and furnish them to any Service officer upon request. The information and documents which the school must keep on each student are as follows:

(i) The admission number from the student's Form I-20 ID copy.

(ii) Country of citizenship.

(iii) Address and telephone number.

(iv) Status, i.e., full-time or part-time.

(v) Course load.

(vi) Date of commencement of studies.

(vii) Degree program and field of study.

(viii) Expected date of completion.

(ix) Nonimmigrant classification.

(x) Termination date and reason, if known.

(xi) The documents referred to in paragraph (k) of this section.

(xii) Information specified by the Service as necessary to identify the student, such as date and place of birth, and to determine the student's immigration status.

(2) *Reporting requirements.* At intervals specified by the Service but not more frequently than once a term or

session, the Service's processing center shall send each school (to the address given on Form I-17 as that to which the list should be sent) a list of all F-1 and M-1 students who, according to Service records, are attending that school. A designated school official at the school must note on the list whether or not each student on the list is pursuing a full course of study and give, in addition to the above information, the names and current addresses of all F-1 or M-1 students, or both, not listed, attending the school and other information specified by the Service as necessary to identify the students and to determine their immigration status. The designated school official must comply with the request, sign the list, state his or her title, and return the list to the Service's processing center within sixty days of the date of the request.

(h) *Review of school approvals*—(1) *Regular review of school approvals.* The district director shall review from time to time the approval granted to each school in his or her district. The purpose of the review is to determine whether the school meets the eligibility requirements of paragraph (e) of this section and has complied with the reporting requirements of paragraph (g)(2) of this section. The district director may require each school whose approval is reviewed to furnish a currently executed Form I-17 as a petition for continuation of school approval without fee together with the supporting documents specified in paragraph (b) of this section. If, upon completion of the review, the district director finds that the approval should not be continued, the district director shall institute withdrawal proceedings in accordance with § 214.4(b).

(2) *One-time recertification process*—(i) *General.* Beginning on August 1, 1983, the Service shall notify, in writing, each approved school that it must submit a petition for continuation of its school approval. By November 15, 1983 or ninety days after receipt of the notification, whichever is later, each school desiring to continue its approval must submit to the Service—

(A) Form I-17 without fee;

(B) The names, titles, and sample signatures of its designated officials as defined in paragraph (l)(1) of this section;

(C) A statement signed by each designated official certifying that the official has read the Service regulations relating to nonimmigrant students, namely §§ 214.1(b), 214.2(f), and 214.2(m); the Service regulations relating to change of nonimmigrant classification for students, namely §§ 248.1(c), 248.1(d), 248.3(b), and 248.3(d); the Service regulations relating to school approval, namely this section; and the Service regulations relating to withdrawal of school approval, namely § 214.4; and affirming the official's intent to comply with these regulations; and

(D) The supporting documents specified in paragraph (b) of this section.

(ii) *Withdrawal of school approval.* The purpose of the one-time recertification process is to enable the Service to update its records and review the approval of each school desiring to continue its approval to determine whether it meets the eligibility requirements of paragraph (e) of this section and has complied with the reporting requirements of paragraph (g)(2) of this section. If, upon completion of the review, the Service finds that the approval should not be continued, the district director having jurisdiction over the school shall institute withdrawal proceedings in accordance with § 214.4(b). If an approved school fails to submit a petition for continuation of school approval in accordance with this paragraph, its approval will be automatically withdrawn. The district director shall advise the school of an automatic withdrawal of a school's approval pursuant to this paragraph. The effective date of the withdrawal is the date of the notice of that withdrawal. Automatic withdrawal of a school's approval is without prejudice to consideration of a new petition for school approval.

(i) *Administration of student regulations by the Immigration and Naturalization Service.* District directors in the field shall be responsible for conducting periodic reviews on the campuses under the jurisdiction of their offices to determine whether students are complying with Service regulations including keeping their passports valid for a period of six months at all times when required. Service officers shall take appropriate action regarding violations of the regulations.

(j) *Advertising.* In any advertisement, catalogue, brochure, pamphlet, literature, or other material hereafter printed or reprinted by or for an approved school, any statement which may appear in such material concerning approval for attendance by nonimmigrant students shall be limited solely to the following: This school is authorized under Federal law to enroll nonimmigrant alien students.

(k) *Issuance of Certificate of Eligibility.* A designated official of a school that has been approved for attendance by nonimmigrant students must certify Form I-20A or I-20M, but only after page 1 has been completed in full. A Form I-20A-B or I-20M-N issued by an approved school system must state which school within the system the student will attend. The form must be issued in the United States. Only a designated official shall issue a Certificate of Eligibility, Form I-20A-B or I-20M-N, to a prospective student and only after the following conditions are met:

(1) The prospective student has made a written application to the school.

(2) The written application, the student's transcripts or other records of courses taken, proof of financial responsibility for the student, and other supporting documents have been received, reviewed, and evaluated at the school's location in the United States.

(3) The appropriate school authority has determined that the prospective student's qualifications meet all standards for admission.

(4) The official responsible for admission at the school has accepted the prospective student for enrollment in a full course of study.

(l) *Designated official*—(1) *Meaning of term "designated official".* As used in §§ 214.1(b), 214.2(f), 214.2(m), 214.4 and this section, a "designated official" or "designated school official" means a regularly employed member of the school administration whose office is located at the school and whose compensation does not come from commissions for recruitment of foreign students. An individual whose principal obligation to the school is to recruit foreign students for compensation does not qualify as a designated official. The president, owner, or head of a school or school system must designate a designated official. The designated official may not delegate this designation to any other person. Each school or institution may have up to five designated officials at any one time. In a multi-campus institution, each campus may have up to five designated officials at any one time. In an elementary or secondary school system, however, the entire school system is limited to five designated officials at any one time.

(2) *Name, title, and sample signature.* Petitions for school approval must include the names, titles, and sample signatures of designated officials. An approved school must report to the Service office having jurisdiction over it any changes in designated officials and furnish the name, title, and sample signature of the new designated official within thirty days of each change.

(3) *Statement of designated official.* A petition for school approval must include a statement by each designated official certifying that the official has read the Service regulations relating to nonimmigrant students, namely §§ 214.1(b), 214.2(f), and 214.2(m); the Service regulations relating to change of nonimmigrant classification for students, namely §§ 248.1(c), 248.1(d), 248.3(b), and 248.3(d); the Service regulations relating to school approval, namely this section and the regulations relating to withdrawal of school approval namely, § 214.4, and affirming the official's intent to comply with these regulations. An approved school must also submit to the Service office having jurisdiction over it such a statement from any new designated official within thirty days of each change in designated official.

[30 FR 919, Jan. 29, 1965, as amended at 32 FR 11628, Aug. 11, 1967; 37 FR 7584, Apr. 18, 1972; 37 FR 17463, Aug. 29, 1972; 42 FR 26413, May 24, 1977; 43 FR 54621, Nov. 22, 1978; 48 FR 14590, Apr. 5, 1983; 48 FR

19867, May 3, 1983; 48 FR 23160, May 24, 1983; 48 FR 30350, July 1, 1983; 48 FR 49000, Oct. 24, 1983]

§ 214.4 Withdrawal of school approval.

(a) *General*—(1) *Withdrawal on notice.* If a school's approval is withdrawn on notice as provided in paragraphs (b), (c), (d), (e), (f), (g), (h), (i) (j), and (k) of this section, the school is not eligible to file another petition for school approval until at least one year after the effective date of the withdrawal. The approval by the Service, pursuant to sections 101(a)(15)(F)(i) or 101(a)(15)(M)(i) or both, of the Act, of a petition by a school or school system for the attendance of nonimmigrant students will be withdrawn on notice if the school or school system is no longer entitled to the approval for any valid and substantive reason including, but not limited to, the following:

(i) Failure to comply with § 214.3(g)(1) without a subpoena.

(ii) Failure to comply with § 214.3(g)(2).

(iii) Failure of a designated official to notify the Service that an F-1 student intends to transfer to another school as required by § 214.2(f)(8)(ii).

(iv) Willful issuance by a designated official of a false statement or certification in connection with a school transfer or an application for employment or practical training.

(v) Any conduct on the part of a designated official which does not comply with the regulations.

(vi) The designation as a designated official of an individual who does not meet the requirements of § 214.3(l)(1).

(vii) Failure to provide the Service with the names, titles, and sample signatures of designated officials as required by § 214.3(l)(2).

(viii) Failure to submit statements of designated officials as required by § 214.3(l)(3).

(ix) Issuance of Forms I-20A or I-20M to students without receipt of proof that the students have met scholastic, language or financial requirements.

(x) Issuance of Forms I-20A or I-20M to aliens who will not be enrolled in or carry full courses of study as defined in §§ 214.2(f)(6) or 214.2(m)(9).

(xi) Failure to operate as a bona fide institution of learning.

(xii) Failure to employ qualified professional personnel.

(xiii) Failure to limit its advertising in the manner prescribed in § 214.3(j).

(xiv) Failure to maintain proper facilities for instruction.

(xv) Failure to maintain accreditation or licensing necessary to qualify graduates as represented in the petition.

(xvi) Failure to maintain the physical plant, curriculum, and teaching staff in the manner represented in the petition for school approval.

(xvii) Failure to comply with the procedures for issuance of Forms 1-20A or 1-20M as set forth in § 214.3(k).

(2) *Automatic withdrawal.* If an approved school terminates its operations, approval will be automatically withdrawn as of the date of termination of the operations. If an approved school changes ownership, approval will be automatically withdrawn sixty days after the change of ownership unless the school files a new petition for school approval within sixty days of that change of ownership. The district director must review the petition to determine whether the school still meets the eligibility requirements of § 214.3(e). If, upon completion of the review, the district director finds that the approval should not be continued, the district director shall institute withdrawal proceedings in accordance with paragraph (b) of this section. Automatic withdrawal of a school's approval is without prejudice to consideration of a new petition for school approval.

(b) *Notice.* Whenever a district director has reason to believe that an approved school or school system in his district is no longer entitled to approval, a proceeding shall be commenced by service upon its authorized representative of notice of intention to withdraw the approval. The notice shall inform the authorized representative of the school or school system of the grounds upon which it is intended to withdraw its approval. In such a proceeding the authorized representative of the school or school system shall be known as the respondent. The notice shall also inform the respondent that he may, within 30 days of the date of service of the notice, submit written representations under oath supported by documentary evidence setting forth reasons why the approval should not be withdrawn, and that he may, within such period, request a hearing before a special inquiry officer in support of, or in lieu of his written answer. The respondent shall further be informed that he may have the assistance of or be represented by counsel or representative of his choice qualified under Part 292 of this chapter, without expense to the Government, in the preparation of his answer or in connection with his hearing, and that he may present such evidence in his behalf as may be relevant to the withdrawal.

(c) *Allegations admitted; no answer filed; no hearing requested.* If the answer admits all the allegations in the notice, or if no answer is filed within the 30-day period, or if no hearing is requested within such period, the district director shall withdraw the approval previously granted and shall notify the respondent of the decision. No appeal shall lie from the district director's decision.

(d) *Allegations contested or denied; hearing requested.* If, within the prescribed time following service of the notice pursuant to paragraph (b) of this section, the respondent has filed an answer which contests or denies any allegation in the notice, or a hearing is requested, a hearing pursuant to paragraph (f) of this section shall be conducted by a special inquiry officer and the procedures specified in §§ 242.10, 242.13, 242.14 (c), (d), and (e), and 242.15 of this chapter shall apply.

(e) *Special inquiry officer's authority; withdrawal and substitution.* In any proceeding conducted under this section, the special inquiry officer shall have authority to interrogate, examine, and cross-examine the respondent and other witnesses, to receive evidence, to determine whether approval shall be withdrawn, to make decisions thereon, including an appropriate order, and to take any other action consistent with applicable provisions of law and regulations as may be appropriate to the disposition of the case. The special inquiry officer may, in his discretion, consider any information and views furnished by the Department of Education of the United States, which shall be made part of the record of proceedings and may be rebutted by the respondent. Nothing contained in this section shall be construed to diminish the authority conferred on special inquiry officers by the Act. The special inquiry officer assigned to conduct a hearing shall, at any time, withdraw if he deems himself disqualified. If a hearing has begun but no evidence has been adduced other than the notice and answer, if any, pursuant to paragraphs (b) and (d) of this section, or if a special inquiry officer becomes unavailable to complete his duties within a reasonable time, or if at any time the respondent consents to a substitution, another special inquiry officer may be assigned to complete the case. The new special inquiry officer shall familiarize himself with the record in the case and shall state for the record that he has done so.

(f) *Hearing*—(1) *Trial attorney.* The Government shall be represented at the hearing by a trial attorney who shall have authority to present evidence, and to interrogate, examine, and cross-examine the respondent and other witnesses. The trial attorney is authorized to appeal from a decision of the special inquiry officer pursuant to paragraph (j) of this section and to move for reopening or reconsideration pursuant to paragraph (k) of this section.

(2) *Opening.* The special inquiry officer shall advise the respondent of the nature of the proceeding and the legal authority under which it is conducted; advise the respondent of his right to representation, at no expense to the Government, by counsel of his own choice qualified under Part 292 of this chapter, and require him to state then and there whether he desires representation; advise the respondent that he will have a reasonable opportunity to examine and object to the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; place the respondent under oath; read the allegations in the

notice to the respondent and explain them in nontechnical language, and enter the notice and respondent's answer, if any, as exhibits in the record.

(3) *Pleading by respondent.* The special inquiry officer shall require the respondent to state for the record whether he admits or denies the allegations contained in the notice, or any of them, and whether he concedes that the approval of the petition by the school or school system for the attendance of nonimmigrant students should be withdrawn. If the respondent admits all of the allegations and concedes that the approval in his case should be withdrawn under the allegations set forth in the notice, and the special inquiry officer is satisfied that no issues of law or fact remain, he may determine that cause for withdrawal as alleged has been established by the respondent's admissions. The allegations contained in the notice shall be taken as admitted when the respondent, without reasonable cause, fails or refuses to attend or remain in attendance at the hearing.

(g) *Decision and order.* The decision of the special inquiry officer may be oral or written. Except when a determination of withdrawal is based on the respondent's admissions pursuant to paragraph (f)(3) of this section, the decision shall include a discussion of the evidence and findings as to withdrawal. The formal enumeration of findings is not required. The order shall direct either that the proceeding be terminated or that the approval be withdrawn.

(h) *Notice of decision*—(1) *Written decision.* A written decision shall be served upon the respondent and the trial attorney, together with the notice of the right to appeal pursuant to Part 103 of this chapter.

(2) *Oral decision.* An oral decision shall be stated by the special inquiry officer in the presence of the respondent and the trial attorney at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall be furnished with Notice of Appeal, Form I-290B, and advised of the provisions of paragraph (j) of this section. A typewritten copy of the oral decision shall be furnished at the request of the respondent or the trial attorney.

(i) *Finality of order.* The order of the special inquiry officer shall be final except when the case is certified as provided in Part 103 of this chapter or an appeal is made by the respondent or the trial attorney.

(j) *Appeals.* Pursuant to Part 103 of this chapter, an appeal from a decision of a special inquiry officer under paragraph (g) of this section may be made. An appeal shall be taken within 15 days after the mailing of a written decision or the stating of an oral decision. The reasons for the appeal shall be stated briefly in the notice of appeal, Form I-290B; failure to do so may constitute a ground for dismissal of the appeal.

(k) *Reopening or reconsideration.* Except as otherwise provided in this section, a motion to reopen or reconsider shall be subject to the requirement of § 103.5 of this chapter. The special inquiry officer may upon his/her own motion, or upon motion of the trial attorney or the respondent, reopen or reconsider any case in which a decision has been made, unless jurisdiction in the case is vested in an appellate authority under Part 103 of this chapter. A motion to reopen shall not be granted by a special inquiry officer unless he/she is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing.

[37 FR 17463, Aug. 29, 1972, as amended at 48 FR 14592, Apr. 5, 1983; 48 FR 19867, May 3, 1983; 48 FR 22131, May 17, 1983; 49 FR 41015, Oct. 19, 1984; 50 FR 9991, Mar. 13, 1985]

§ 214.5 Libyan and third country nationals acting on behalf of Libyan entities.

(a) Notwithstanding any other provision of this Title, the nonimmigrant status of any Libyan national, or of any other foreign national acting on behalf of a Libyan entity, who is engaging in aviation maintenance, flight operations, or nuclear-related studies or training is terminated.

(b) Notwithstanding any other provision of this chapter, the following benefits will not be available to any

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Libyan national or any other foreign national acting on behalf of a Libyan entity where the purpose is to engage in, or seek to obtain aviation maintenance, flight operations or nuclear-related studies or training:

(1) Application for school transfer.

(2) Application for extension of stay.

(3) Employment authorization or practical training.

(4) Request for reinstatement of student status.

(5) Application for change of nonimmigrant status.

(Secs. 103, 212, 214, 248; 8 U.S.C. 1103, 1182, 1184, 1258)

[48 FR 10297, Mar. 3, 1983]

PART 215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES

Sec.
215.1 Definitions.
215.2 Authority of departure-control officer to prevent alien's departure from the United States.
215.3 Alien whose departure is deemed prejudicial to the interests of the United States.
215.4 Procedure in case of alien prevented from departing from the United States.
215.5 Hearing procedure before special inquiry officer.
215.6 Departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States.
215.7 Instructions from the Administrator required in certain cases.

AUTHORITY: Sec. 104, 66 Stat. 174, Proc. 3004, 18 FR 489; 8 U.S.C. 1104, 3 CFR, 1953 Supp. Interpret or apply sec. 215, 66 Stat. 190; (8 U.S.C. 1185).

SOURCE: 45 FR 65516, Oct. 3, 1980, unless otherwise noted.

§ 215.1 Definitions.

For the purpose of this part:

(a) The term "alien" means any person who is not a citizen or national of the United States.

(b) The term "Commissioner" means the Commissioner of Immigration and Naturalization.

(c) The term "regional commissioner" means an officer of the Immigration and Naturalization Service duly appointed or designated as a regional commissioner, or an officer who has been designated to act as a regional commissioner.

(d) The term "district director" means an officer of the Immigration and Naturalization Service duly appointed or designated as a district director, or an officer who has been designated to act as a district director.

(e) The term "United States" means the several States, the District of Columbia, the Canal Zone, Puerto Rico, the Virgin Islands, Guam, American Samoa, Swains Island, the Trust Territory of the Pacific Islands, and all other territory and waters, continental and insular, subject to the jurisdiction of the United States.

(f) The term "continental United States" means the District of Columbia and the several States, except Alaska and Hawaii.

(g) The term "geographical part of the United States" means: (1) The continental United States, (2) Alaska, (3) Hawaii, (4) Puerto Rico, (5) the Virgin Islands, (6) Guam, (7) the Canal Zone, (8) American Samoa, (9) Swains Island, or (10) the Trust Teritory of the Pacific Islands.

(h) The term "depart from the United States" means depart by land, water, or air: (1) From the United States for any foreign place, or (2) from one geographical part of the United States for a separate geographical part of the United States: *Provided*, That a trip or journey upon a public ferry, passenger vessel sailing coastwise on a fixed schedule, excursion vessel, or aircraft, having both termini in the continental United States or in any one of the other geographical parts of the United States and not touching any territory or waters under the jurisdiction or control of a foreign power, shall not be deemed a departure from the United States.

(i) The term "departure-control officer" means any immigration officer as defined in the regulations of the Immigration and Naturalization Service who is designated to supervise the departure of aliens, or any officer or employee of the United States designated by the Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or the governor of an outlying possession of the United States, to supervise the departure of aliens.

(j) The term "port of departure" means a port in the continental United States, Alaska, Guam, Hawaii, Puerto Rico or the Virgin Islands, designated as a port of entry by the Attorney General or by the Commissioner, or in exceptional circumstances such other place as the departure-control officer may, in his discretion, designate in an individual case, or a port in American Samoa, Swains Island, the Canal Zone, or the Trust Territory of the Pacific Islands, designated as a port of entry by the chief executive officer thereof.

(k) The term "special inquiry officer" shall have the meaning ascribed thereto in section 101(b)(4) of the Immigration and Nationality Act.

§ 215.2 Authority of departure-control officer to prevent alien's departure from the United States.

(a) No alien shall depart, or attempt to depart, from the United States if his departure would be prejudicial to the interests of the United States under the provisions of § 215.3. Any departure-control officer who knows or has reason to believe that the case of an alien in the United States comes within the provisions of § 215.3 shall temporarily prevent the departure of such alien from the United States and shall serve him with a written temporary order directing him not to depart, or attempt to depart, from the United States until notified of the revocation of the order.

(b) The written order temporarily preventing an alien, other than an enemy alien, from departing from the United States shall become final 15 days after the date of service thereof upon the alien, unless prior thereto the alien requests a hearing as hereinafter provided. At such time as the alien is served with an order temporarily preventing his departure from the United States, he shall be notified in writing concerning the provisions of this paragraph, and shall be advised of his right to request a hearing if entitled thereto under § 215.4. In the case of an enemy alien, the written order preventing departure shall become final on the date of its service upon the alien.

(c) Any alien who seeks to depart from the United States may be required, in the discretion of the departure-control officer, to be examined under oath and to submit for official inspection all documents, articles, and other property in his possession which are being removed from the United States upon, or in connection with, the alien's departure. The departure-control officer may permit certain other persons, including officials of the Department of State and interpreters, to participate in such examination or inspection and may exclude from presence at such examination or inspection any person whose presence would not further the objectives of such examination or inspection. The departure-control officer shall temporarily prevent the departure of any alien who refuses to submit to such examination or inspection, and may, if necessary to the enforcement of this requirement, take possession of the alien's passport or other travel document.

§ 215.3 Aliens whose departure is deemed prejudicial to the interests of the United States.

The departure from the United States of any alien within one or more of the following categories shall be deemed prejudicial to the interests of the United States.

(a) Any alien who is in possession of, and who is believed likely to disclose to unauthorized persons, information concerning the plans, preparation, equipment, or establishments for the national defense and security of the United States.

(b) Any alien who seeks to depart from the United States to engage in, or who is likely to engage in, activities of any kind designed to obstruct, impede, retard, delay or counteract the effectiveness of the national defense of the United States or the measures adopted by the United States or the United Nations for the defense of any other country.

(c) Any alien who seeks to depart from the United States to engage in, or who is likely to engage in, activities

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which would obstruct, impede, retard, delay, or counteract the effectiveness of any plans made or action taken by any country cooperating with the United States in measures adopted to promote the peace, defense, or safety of the United States or such other country.

(d) Any alien who seeks to depart from the United States for the purpose of organizing, directing, or participating in any rebellion, insurrection, or violent uprising in or against the United States or a country allied with the United States, or of waging war against the United States or its allies, or of destroying, or depriving the United States of sources of supplies or materials vital to the national defense of the United States, or to the effectiveness of the measures adopted by the United States for its defense, or for the defense of any other country allied with the United States.

(e) Any alien who is subject to registration for training and service in the Armed Forces of the United States and who fails to present a Registration Certificate (SSS Form No. 2) showing that he has complied with his obligation to register under the Universal Military Training and Service Act, as amended.

(f) Any alien who is a fugitive from justice on account of an offense punishable in the United States.

(g) Any alien who is needed in the United States as a witness in, or as a party to, any criminal case under investigation or pending in a court in the United States: *Provided*, That any alien who is a witness in, or a party to, any criminal case pending in any criminal court proceeding may be permitted to depart from the United States with the consent of the appropriate prosecuting authority, unless such alien is otherwise prohibited from departing under the provisions of this part.

(h) Any alien who is needed in the United States in connection with any investigation or proceeding being, or soon to be, conducted by any official executive, legislative, or judicial agency in the United States or by any governmental committee, board, bureau, commission, or body in the United States, whether national, state, or local.

(i) Any alien whose technical or scientific training and knowledge might be utilized by an enemy or a potential enemy of the United States to undermine and defeat the military and defensive operations of the United States or of any nation cooperating with the United States in the interests of collective security.

(j) Any alien, where doubt exists whether such alien is departing or seeking to depart from the United States voluntarily except an alien who is departing or seeking to depart subject to an order issued in extradition, exclusion, or deportation proceedings.

(k) Any alien whose case does not fall within any of the categories described in paragraphs (a) to (j), inclusive, of this section, but which involves circumstances of a similar character rendering the alien's departure prejudicial to the interests of the United States.

§ 215.4 Procedure in case of alien prevented from departing from the United States.

(a) Any alien, other than an enemy alien, whose departure has been temporarily prevented under the provisions of § 215.2, may, within 15 days of the service upon him of the written order temporarily preventing his departure, request a hearing before a special inquiry officer. The alien's request for a hearing shall be made in writing and shall be addressed to the district director having administrative jurisdiction over the alien's place of residence. If the alien's request for a hearing is timely made, the district director shall schedule a hearing before a special inquiry officer, and notice of such hearing shall be given to the alien. The notice of hearing shall, as specifically as security considerations permit, inform the alien of the nature of the case against him, shall fix the time and place of the hearing, and shall inform the alien of his right to be represented, at no expense to the Government, by counsel of his own choosing.

(b) Every alien for whom a hearing has been scheduled under paragraph

(a) of this section shall be entitled: (1) To appear in person before the special inquiry officer, (2) to be represented by counsel of his own choice, (3) to have the opportunity to be heard and to present evidence, (4) to cross-examine the witnesses who appear at the hearing, except that if, in the course of the examination, it appears that further examination may divulge information of a confidential or security nature, the special inquiry officer may, in his discretion, preclude further examination of the witness with respect to such matters, (5) to examine any evidence in possession of the Government which is to be considered in the disposition of the case, provided that such evidence is not of a confidential or security nature the disclosure of which would be prejudicial to the interests of the United States, (6) to have the time and opportunity to produce evidence and witnesses on his own behalf, and (7) to reasonable continuances, upon request, for good cause shown.

(c) Any special inquiry officer who is assigned to conduct the hearing provided for in this section shall have the authority to: (1) Administer oaths and affirmations, (2) present and receive evidence, (3) interrogate, examine, and cross examine under oath or affirmation both the alien and witnesses, (4) rule upon all objections to the introduction of evidence or motions made during the course of the hearing, (5) take or cause depositions to be taken, (6) issue subpoenas, and (7) take any further action consistent with applicable provisions of law, Executive orders, proclamations, and regulations.

§ 215.5 Hearing procedure before special inquiry officer.

(a) The hearing before the special inquiry officer shall be conducted in accordance with the following procedure:

(1) The special inquiry officer shall advise the alien of the rights and privileges accorded him under the provisions of § 215.4.

(2) The special inquiry officer shall enter of record: (i) A copy of the order served upon the alien temporarily preventing his departure from the United States, and (ii) a copy of the notice of hearing furnished the alien.

(3) The alien shall be interrogated by the special inquiry officer as to the matters considered pertinent to the proceeding, with opportunity reserved to the alien to testify thereafter in his own behalf, if he so chooses.

(4) The special inquiry officer shall present on behalf of the Government such evidence, including the testimony of witnesses and the certificates or written statements of Government officials or other persons, as may be necessary and available. In the event such certificates or statements are received in evidence, the alien may request and, in the discretion of the special inquiry officer, be given an opportunity to interrogate such officials or persons, by deposition or otherwise, at a time and place and in a manner fixed by the special inquiry officer: *Provided*, That when in the judgment of the special inquiry officer any evidence relative to the disposition of the case is of a confidential or security nature the disclosure of which would be prejudicial to the interests of the United States, such evidence shall not be presented at the hearing but shall be taken into consideration in arriving at a decision in the case.

(5) The alien may present such additional evidence, including the testimony of witnesses, as is pertinent and available.

(b) A complete verbatim transcript of the hearing, except statements made off the record shall be recorded. The alien shall be entitled, upon request, to the loan of a copy of the transcript, without cost, subject to reasonable conditions governing its use.

(c) Following the completion of the hearing, the special inquiry officer shall make and render a recommended decision in the case, which shall be governed by and based upon the evidence presented at the hearing and any evidence of a confidential or security nature which the Government may have in its possession. The decision of the special inquiry officer shall recommend: (1) That the temporary order preventing the departure of the alien from the United States be made final, or (2) that the temporary order preventing the departure of the alien

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from the United States be revoked. This recommended decision of the special inquiry officer shall be made in writing and shall set forth the officer's reasons for such decision. The alien concerned shall at his request be furnished a copy of the recommended decision of the special inquiry officer, and shall be allowed a reasonable time, not to exceed 10 days, in which to submit representations with respect thereto in writing.

(d) As soon as practicable after the completion of the hearing and the rendering of a decision by the special inquiry officer, the district director shall forward the entire record of the case, including the recommended decision of the special inquiry officer and any written representations submitted by the alien, to the regional commissioner having jurisdiction over his district. After reviewing the record, the regional commissioner shall render a decision in the case, which shall be based upon the evidence in the record and on any evidence or information of a confidential or security nature which he deems pertinent. Whenever any decision is based in whole or in part on confidential or security information not included in the record, the decision shall state that such information was considered. A copy of the regional commissioner's decision shall be furnished the alien, or his attorney or representative. No administrative appeal shall lie from the regional commissioner's decision.

(e) Notwithstanding any other provision of this part, the Administrator of the Bureau of Security and Consular Affairs referred to in section 104(b) of the Immigration and Nationality Act, or such other officers of the Department of State as he may designate, after consultation with the Commissioner, or such other officers of the Immigration and Naturalization Service as he may designate, may at any time permit the departure of an individual alien or of a group of aliens from the United States if he determines that such action would be in the national interest. If the Administrator specifically requests the Commissioner to prevent the departure of a particular alien or of a group of aliens, the Commissioner shall not permit the departure of such alien or aliens until he has consulted with the Administrator.

(f) In any case arising under §§ 215.1 to 215.7, the Administrator shall, at his request, be kept advised, in as much detail as he may indicate is necessary, of the facts and of any action taken or proposed.

§ 215.6 Departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States.

(a) In addition to the restrictions and prohibitions imposed by the provisions of this part upon the departure of aliens from the United States, any alien who seeks to depart from the Canal Zone, the Trust Territory of the Pacific Islands, or an outlying possession of the United States shall comply with such other restrictions and prohibitions as may be imposed by regulations prescribed, with the concurrence of the Administrator of the Bureau of Security and Consular Affairs and the Commissioner, by the Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or by the governor of an outlying possession of the United States, respectively. No alien shall be prevented from departing from such zone, territory, or possession without first being accorded a hearing as provided in §§ 215.4 and 215.5.

(b) The Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or the governor of any outlying possession of the United States shall have the authority to designate any employee or class of employees of the United States as hearing officers for the purpose of conducting the hearing referred to in paragraph (a) of this section. The hearing officer so designated shall exercise the same powers, duties, and functions as are conferred upon special inquiry officers under the provisions of this part. The chief executive officer of such zone, territory, or possession shall, in lieu of the regional commissioner, review the recommended decision of the hearing officer, and shall render a decision in any case referred to him, basing it on evidence in the record and on any evidence or information of a confidential or a security nature which he deems pertinent.

§ 215.7 Instructions from the Administrator required in certain cases.

In the absence of appropriate instructions from the Administrator of the Bureau of Security and Consular Affairs, departure-control officers shall not exercise the authority conferred by § 215.2 in the case of any alien who seeks to depart from the United States in the status of a nonimmigrant under section 101(a)(15) (A) or (G) of the Immigration and Nationality Act, or in the status of a nonimmigrant under section 11(3), 11(4), or 11(5) of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (61 Stat. 756): *Provided*, That in cases of extreme urgency, where the national security so requires, a departure-control officer may preliminarily exercise the authority conferred by § 215.2 pending the outcome of consultation with the Administrator, which shall be undertaken immediately. In all cases arising under this section, the decision of the Administrator shall be controlling: *Provided*, That any decision to prevent the departure of an alien shall be based upon a hearing and record as prescribed in this part.

PART 221—ADMISSION OF VISITORS OR STUDENTS

AUTHORITY: Secs. 101, 103, 221, 66 Stat. 166, 173, 191; 8 U.S.C. 1101, 1103, 1201.

§ 221.1 Admission under bond.

The district director having jurisdiction over the intended place of residence of an alien may accept a bond on behalf of an alien defined in section 101(a)(15)(B) or (F) of the Act prior to the issuance of a visa to the alien or upon receipt of a request directly from a U.S. consular officer or upon presentation by an interested person of a notification from the consular officer requiring such a bond; such a bond also may be accepted by the district director with jurisdiction over the port of entry or preinspection station where inspection of the alien takes place. Upon acceptance of such a bond, the district director shall notify the United States consular officer who requested the bond, giving the date and place of acceptance and amount of the bond. All bonds given as a condition of admission of an alien under section 221(g) of the Act shall be executed on Form I-352. For procedures relating to bond riders, acceptable sureties, cancellation, or breaching of bonds, see Part 103 of this chapter.

[32 FR 9626, July 4, 1967, as amended at 34 FR 1008, Jan. 23, 1969]

PART 223—REENTRY PERMITS

Sec.
223.1 Application.
223.2 Period of validity.
223.3 Expired permits.

AUTHORITY: Secs. 103, 223, 66 Stat. 173, 194; 8 U.S.C. 1103, 1203.

§ 223.1 Application.

An application for a reentry permit under the provisions of section 223 of the Act shall be submitted on Form I-131 by an applicant in the United States at least 30 days prior to the proposed date of departure. It shall be accompanied by the applicant's alien registration receipt card Form I-151 or I-551, AR-3, or AR-103, or an application for a lost or destroyed card on Form I-90. If the applicant's name has been changed by marriage or by order of any court of competent jurisdiction, and a reentry permit or Form I-151 or I-551 has never been issued in the changed name, the application shall also be accompanied by appropriate documentary evidence of such change. A reentry permit shall not be issued unless the alien is in possession of or is being furnished Form I-151 or I-551. Additional pages for the affixation of foreign visas may be attached to a valid reentry permit without formal application or fee. A reentry permit applicant who is a lawful permanent resident alien, but who has an occupational status which would if he were seeking admission to the United States entitle him to a nonimmigrant status under section 101(a)(15) (A), (E), or (G), of the Act, may be issued a reentry permit only if he executes and submits with his application, or has previously executed and submitted, the written waiver on Form I-508 required by section 247(b) of the Act and Part 247 of this chapter, and, if applicable, Form I-508F (election as to tax exemption under the Convention between the United States and the French Republic) required by Part 247 of this chapter. A reentry permit applicant who is a lawful permanent resident alien and who is in possession of a refugee travel document issued pursuant to Part 223a of this chapter may be issued a reentry permit only if he surrenders the refugee travel document to the Service. The applicant shall be notified of the decision made on his application for a reentry permit and if the application is denied of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter.

[39 FR 39545, Nov. 8, 1974, as amended at 45 FR 32657, May 19, 1980]

§ 223.2 Period of validity.

A reentry permit is valid for a maximum period of two years unless otherwise restricted. The period of validity commences from the date of issuance and not from the date the application for the permit was submitted to the Service. A reentry permit cannot be renewed.

[47 FR 44236, Oct. 7, 1982]

§ 223.3 Expired permits.

Upon the expiration of the period of validity of a reentry permit, the permit shall be surrendered by the holder to the issuing office. If the expired permit has not been surrendered to the Service, no subsequent reentry permit shall be issued to the same alien unless the alien first surrenders the expired permit, or satisfactorily explains why the permit cannot be surrendered. However, an alien shall be permitted to retain an expired reentry permit that contains valid visas, entry stamps or documents necessary for entry into another country. The expired reentry permit shall be voided by an immigration officer by clipping the upper left hand corner of the cover and indentification page prior to returning the document to the alien.

[47 FR 44239, Oct. 7, 1982]

PART 223a—REFUGEE TRAVEL DOCUMENT

Sec.

223a.1 Definition of refugee.
223a.2 Definition of refugee travel document.
223a.3 Eligibility.
223a.4 Application.
223a.5 Validity of refugee travel document.
223a.6 Return to the United States.
223a.7 Extension.
223a.8 Surrender of document.

AUTHORITY: Secs. 103, 211, 212, 235, 236, 237, 241; 8 U.S.C. 1103, 1181, 1182, 1225, 1226, 1227, 1251, and Protocol Relating to the Status of Refugees (TIAS 6577).

SOURCE: 38 FR 8238, Mar. 30, 1973, unless otherwise noted.

§ 223a.1 Definition of refugee.

For the purposes of this part, the term "refugee" shall be as defined in Section 101(a)(42) of the Act.

(Secs. 101 and 103 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1101 and 1103))

[49 FR 18996, May 4, 1984]

§ 223a.2 Definition of refugee travel document.

As used in this chapter, the term "refugee travel document" means a document issued by the Service on Form I-571 in implementation of article 28 of the U.N. Convention of July 28, 1951, and in accordance with the provisions of this part.

§ 223a.3 Eligibility.

Any alien physically present in the United States may apply for a refugee travel document if he believes he is a refugee. A refugee travel document shall be issued to a refugee whose presence in the United States is lawful unless compelling reasons of national security or public order otherwise require; lawful presence, as used herein, does not include brief presence as a transit or crewman, or any other presence so brief as not to signify residence even of a temporary nature. A refugee travel document may be issued, in the exercise of discretion, to any other refugee unless reasons of national security or public order otherwise require; sympathetic consideration shall be given to such an application unless the Service intends to expel or exclude the alien from the United States. An alien who is a lawful permanent resident and who is in possession of a reentry permit issued pursuant to section 223 of the Act and Part 223 of this chapter may be issued a refugee travel document only if he surrenders the reentry permit to the Service.

[42 FR 19478, Apr. 14, 1977]

§ 223a.4 Application.

Application for a refugee travel document shall be submitted on Form I-570 at least 45 days prior to the proposed date of departure from the United States. The application shall be submitted to the district director having jurisdiction over the applicant's place of residence and shall be accompanied by his Form I-94 or Form I-151 or I-551. The applicant shall be notified of the decision on his application. If the application is approved, the refugee travel document shall be issued and the immigration status which may be accorded to the alien upon his return to the United States shall be specified therein. Unless the applicant is in the United States as a conditional entrant or lawful permanent resident, the status of "Parolee", shall be specified. If he is in the United States as a conditional entrant, that status shall be specified; if he is a lawful permanent resident, that status shall be specified. If the application is denied, the applicant shall be notified of the reasons therefor and of his right to appeal in accordance with the provisions of part 103 of this chapter.

[38 FR 8238, Mar. 30, 1973, as amended at 45 FR 32657, May 19, 1980]

§ 223a.5 Validity of refugee travel document.

(a) *General.* A refugee travel document shall be valid for not more than two years from the date of issuance and shall not be renewable. The document may be used for one or more applications for admission to the United States. It shall have no effect under the immigration laws except to show that during the period of its validity the lawful holder thereof may be accorded the status specified in the refugee travel document upon returning to the United States.

(b) *Invalidity*—(1) *False application.* A refugee travel document shall be invalid if the alien obtained it by making a material false representation or concealment in his application.

(2) *Exclusion or deportation proceedings.* A refugee travel document shall be invalid if the alien is ordered excluded or deported.

(3) *Aliens who are no longer refugees.* A refugee travel document shall be invalid if the U.N. Convention of July 28, 1951, shall cease to apply or shall not apply to the alien as provided in Article 1C, D, E, or F of the convention.

(Secs. 101 and 103 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1101 and 1103))

[38 FR 8238, Mar. 30, 1973, as amended at 42 FR 19478, Apr. 14, 1977; 49 FR 18996, May 4, 1984]

§ 223a.6 Return to the United States.

(a) *General.* Every alien returning to the United States who presents a valid unexpired refugee travel document shall be permitted to come physically within the territory of the United States to receive consideration of his application for admission in conformity with paragraphs (b) and (c) of this section.

(b) *Inspection and immigration status.* Upon arrival, an alien who presents a valid unexpired refugee travel document shall be examined as to his admissibility under the Act, and under the U.N. Convention of July 28, 1951, and the Protocol of January 31, 1967, except that any question of admissibility as a lawful permanent resident or as a conditional entrant shall be determined solely in accordance with the provisions of the Act. An alien shall be accorded the immigration status endorsed in his refugee travel document unless he is no longer eligible therefor or he applies for and is found eligible for some other immigration status.

(c) *Exclusion.* If an alien who presents a valid unexpired refugee travel document appears to the examining immigration officer to be excludable as provided in § 236.3(e) of this chapter, he shall be referred for proceedings under sections 236 and 237 of the Act. Section 235(c) of the Act shall not be applicable.

§ 223a.7 Extension.

Refugee travel documents may not be extended. However, currently valid refugee travel documents issued for a one year period without restrictions, shall be valid for a period of two years from the original date of issuance.

(Secs. 101 and 103 of the Immigration and Nationality Act, as amended, (8 U.S.C. 1101 and 1103))

[49 FR 18996, May 4, 1984]

§ 223a.8 Surrender of document.

(a) *Expired document.* Upon expiration of the period of validity of a refugee travel document, it shall be surrendered to an immigration officer or to the issuing office of the Service. If an alien's expired refugee travel document has not been surrendered to the Service, no subsequent refugee travel document shall be issued to him unless he shall first surrender the expired document or satisfactorily account for his failure to do so. A refugee travel document shall also be surrendered if the alien's immigration status has changed so that upon return to the United States he may not be accorded the status endorsed in the document.

(b) *Invalid document.* An invalid refugee travel document shall be surrendered to an immigration officer except that an alien traveling abroad shall be permitted to retain it until his return to the United States prior to its expiration date. A refugee travel document shall be surrendered provisionally upon notification within the United States that its validity is being investigated or upon notification of institution of exclusion or deportation proceedings, and it shall be returned to the alien if the outcome of the investigation is favorable to him or the final order issued under the instituted proceedings does not result in the document becoming invalid pursuant to § 223a.5(b)(3).

PART 231—ARRIVAL-DEPARTURE MANIFESTS AND LISTS; SUPPORTING DOCUMENTS

Sec.
231.1 Arrival manifest for passengers.
231.2 Departure manifest for passengers.
231.3 Exemptions for private vessels and aircraft.

Authority: Secs. 101, 103, 212, 231, 238, 239, 66 Stat. 166, 173, 182, 195, 202, 203; 8 U.S.C. 1101, 1103, 1182, 1221, 1228, 1229.

§ 231.1 Arrival manifest for passengers.

(a) *Requirement for manifest.* The master, captain, or agent of every vessel or aircraft arriving in the United States from a foreign place or outlying possession of the United States shall present an arrival manifest to the immigration officer at the port of entry. The manifest must be in the form of a separate Arrival/Departure Record, Form I-94, prepared on board for each passenger except: United States citizens, lawful permanent resident aliens of the United States, and immigrants to the United States. In addition, a properly completed Aircraft/Vessel Report, Form I-92, must be submitted for each arriving aircraft or vessel which is transporting passengers. Manifests are not required by vessels or aircraft arriving directly from Canada on a trip originating in that country or arriving in the Virgin Islands of the United States directly from a trip originating in the British Virgin Islands.

(b) *In-Transit Passengers.* An Arrival/Departure Record, Form I-94, is not required for an arriving, through-flight passenger at a United States port provided:

(1) The passenger will depart directly to a foreign place or outlying possession of the United States on the same flight;

(2) The number of through-flight passengers is noted on the Aircraft/Vessel Report, Form I-92, for the flight;

(3) The flight is inspected at a port of entry designated in paragraph 214.2(c) of this chapter;

(4) The carrier is signatory to an Immediate and Continuous Transit Agreement, Form I-426; and

(5) All through-flight passengers remain on board the aircraft or in a separate area under the direction and control of the Service during the ground time.

(c) *Progressive Clearance.* Inspection of arriving passengers may be deferred at the request of the carrier to an onward port of debarkation. Authorization for this progressive clearance may be granted by the Regional Commissioner when both the initial port of entry and the onward port are within the same regional jurisdiction, but when the initial port of entry and onward port are located within different regions, requests for progressive clearance must be authorized by the Assistant Commissioner for Inspections. When progressive clearance is requested, the carrier shall present Form I-92 in duplicate at the initial port of entry. The original Form I-92 will be processed at the initial port of entry, and the duplicate noted and returned to the carrier for presentation at the onward port of debarkation.

(d) *Preparation of Arrival/Departure Record, Form I-94.* Air and sea carriers shall be responsible to ensure that a properly completed Form I-94 is presented to the immigration inspector at the port of entry for each arriving passenger except those passengers who do not require a Form I-94 under paragraph (a) of this section. The following classes of aliens are not required to complete the departure portion of the form I-94 if they are entering the U.S. for business or pleasure under section 101(a)(15)(B) of the Act, and intend to remain in the United States for less than six months;

(1) Citizens of Canada or British dependent territories citizens, Bermuda, and

(2) Residents of Canada or Bermuda having common nationality with Canadian nationals or British dependent territories citizens, Bermuda.

[48 FR 21548, May 13, 1983, as amended at 48 FR 36093, Aug. 9, 1983; 48 FR 40209, Sept. 6, 1983]

§ 231.2 Departure manifest for passengers.

The master, captain, or agent of every vessel or aircraft departing from the United States for a foreign place or outlying possession of the United States shall present a departure manifest to the immigration officer at the port of departure. The manifest must be in the form of a properly completed departure portion of Form I-94, Arrival/Departure Record, for each person on board except for United States citizens, and lawful permanent resident aliens of the United States. No manifest is required for a vessel or aircraft departing on a trip directly for and terminating in Canada, or departing from the United States Virgin Islands driectly to the British Virgin Islands on a trip terminating in the British Virgin Islands. Whenever possible, the departure Form I-94 used shall be the same form given the alien at the time of arrival in the United States. Carriers shall endorse the Form I-94 with the departure information on the reverse of the form. Additionally, a properly completed Aircraft/Vessel Report, Form I-92, must be completed for each departing aircraft and each departing vessel which is transporting passengers. Submission of Forms I-94 and I-92 to the immigration officer shall normally be accomplished within 48 hours of the departure, exclusive of Saturdays, Sundays, and legal holidays. Failure to submit departure manifests within this time period shall be regarded as failure to comply with section 231(d) of the Act, unless prior authorization for delayed delivery of the departure manifest is obtained from the district director. A nonimmigrant alien departing on an aircraft proceeding directly to Canada on a flight terminating in that country should surrender any Form I-94 in his/her possession to the airline agent at the port of departure. Aircraft manifests should not include I-94 forms for in-transit passengers referred to in paragraph (b) of § 231.1.

[48 FR 21548, May 13, 1983]

§ 231.3 Exemptions for private vessels and aircraft.

The provisions of this part relating to the presentation of arrival and departure manifests shall not apply to a private vessel or private aircraft not engaged directly or indirectly in the carriage of persons or cargo for hire.

[32 FR 9627, July 4, 1967]

PART 232—DETENTION FOR EXAMINATION TO DETERMINE MENTAL OR PHYSICAL DEFECTS

AUTHORITY: Secs. 103, 232, 66 Stat. 173, 196; 8 U.S.C. 1103, 1222.

§ 232.1 Detention.

When a district director has reasonable grounds for believing that persons arriving in the United States should be detained for reasons specified in section 232 of the Act, he shall, after consultation with the United States Public Health Service at the port of entry, notify the master or agent of the arriving vessel or aircraft of his intention to effect such detention on board the arriving vessel, another vessel of the same transportation line, at the airport of arrival, or any other suitable place of detention. Such notice on Form I-259 shall indicate the names of the persons to be detained, the place of detention, and the reasons therefor. If the master or agent desires to assume responsibility during removal and detention, he shall so request the district director, and if granted, shall execute agreement Form I-259A or blanket agreement Form I-259B to assume such responsibility. Following determination of admissibility, the district director will ascertain the assessable detention expenses and bill or reimburse the master or agent.

[22 FR 9519, Nov. 28, 1957]

PART 233—TEMPORARY REMOVAL FOR INSPECTION

Authority: Secs. 103, 233, 66 Stat. 173, 197; 8 U.S.C. 1103, 1223.

§ 233.1 Temporary removal.

When an immigration officer at the port of entry has reasonable grounds for believing that it would facilitate the inspection of persons arriving in the United States, if they were temporarily removed, he shall notify the master or agent of the arriving vessel or aircraft of his intention to effect their removal for examination. Such notice on Form I-259 shall indicate the names of the persons to be removed, the place to which they shall be removed, and the reasons therefor. If the master or agent desires to assume responsibility during removal and detention, he shall so request the district director at the port of entry, and, if granted, shall execute agreement Form I-259A or blanket agreement Form I-259B to assume such responsibility. Following determination of admissibility, the district director will ascertain the assessable detention expenses and bill or reimburse the master or agent.

[22 FR 9519, Nov. 28, 1957]

PART 234—PHYSICAL AND MENTAL EXAMINATION OF ARRIVING ALIENS

Sec.
234.1 General.
234.2 Examination in the United States of alien applicants for benefits under the immigration laws and other aliens.

AUTHORITY: Secs. 103, 234, 66 Stat. 173, 198; (8 U.S.C. 1103, 1224).

§ 234.1 General.

The manner in which the physical and mental examination of aliens shall be conducted is set forth in 42 CFR Part 34.

[38 FR 33061, Nov. 30, 1973, as amended at 38 FR 34315, Dec. 13, 1973]

§ 234.2 Examination in the United States of alien applicants for benefits under the immigration laws and other aliens.

(a) *General.* When a medical examination is required of an alien who files an application for status as a permanent resident under section 245 of the Act or Part 245 of this chapter, it shall be made by a selected civil surgeon. Such examination shall be performed in accordance with 42 CFR Part 34 and any additional instructions and guidelines as may be considered necessary by the U.S. Public Health Service. In any other case in which the Service requests a medical examination of an alien, the examination shall be made by a medical officer of the U.S. Public Health Service, or by a civil surgeon if a medical officer of the U.S. Public Health Service is not located within a reasonable distance or is otherwise not available.

(b) *Selection of civil surgeons.* When a civil surgeon is to perform the examination, he shall be selected by the district director having jurisdiction over the area of the alien's residence. The district director shall select as many civil surgeons, including clinics employing qualified civil surgeons, as he determines to be necessary to serve the needs of the Service in a locality under his jurisdiction. Each civil surgeon selected shall be a licensed physician with no less than 4 years' professional experience. Officers of local health departments and medical societies may be consulted to obtain the names of competent surgeons and clinics willing to make the examinations. An understanding shall be reached with respect to the fee which the surgeon or clinic will charge for the examination. The alien shall pay the fee agreed upon directly to the surgeon making the examination.

(c) *Civil surgeon reports*—(1) *Applicants for status of permanent resident.*

(i) When an applicant for status as a permanent resident is found upon examination to be free of any defect, disease, or disability listed in section 212(a) of the Act, the civil surgeon shall endorse Form I-486A, Medical Examination and Immigration Interview, and forward it with the X-ray and other pertinent laboratory reports to the immigration office from which the alien was referred. The immigration office may return the X-ray and laboratory reports to the alien. If the applicant is found to be afflicted with a defect, disease or disability listed under section 212(a) of the Act, the civil surgeon shall complete Form OF-157 in duplicate, and forward it with Form I-486A, X-ray, and other pertinent laboratory reports to the immigration office from which the alien was referred.

(ii) If the applicant is found to be afflicted with active tuberculosis and a waiver is granted under section 212(g) of the Act, the immigration office will forward a copy of the completed Form I-601 (Application for Waiver of Grounds of Excludability) and a copy of the Form OF-157 to the Director, Division of Quarantine, Center for Prevention Sevices, Centers for Disease Control, Atlanta, Ga. 30333.

(iii) If an alien who if found to be mentally retarded or to have had one or more previous attacks of insanity, applies for a waiver of excludability under section 212(g) of the Act, the immigration office will submit to the Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, Ga. 30333, the completed Form I-601, including a copy of the medical report specified in the instructions attached to that form, and a copy of Form OF-157. This official shall review the medical report and advise the Service whether it is acceptable, in accordance with § 212.7(b)(4)(ii) of this chapter.

(iv) In any other case where the applicant has been found to be afflicted with active or inactive tuberculosis or an infectious or noninfectious leprosy condition, the immigration office will forward a copy of Form OF-157 with the applicant's address endorsed on the reverse to the Director, Division of Quarantine, Center for Prevention Services, Centers for Disease Control, Atlanta, Ga. 30333.

(2) *Other aliens.* The results of the examination of an alien who is not an applicant for status as a permanent resident shall be entered on Form I-141, Medical Certificate, in duplicate. This form shall be returned to the Service office by which the alien was referred.

(d) *U.S. Public Health Service hospital and outpatient clinic reports.* When an applicant for a benefit under the immigration laws, other than an applicant for status as a permanent resident, is examined by a medical officer of the U.S. Public Health Service, the results of the examination shall be entered on Form I-141, Medical Certificate, in duplicate. The form shall be returned to the Service office by which the alien was referred.

[38 FR 33061, Nov. 30, 1973, as amended at 48 FR 30610, July 5, 1983]

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

Sec.
235.1 Scope of examination.
235.2 Examination postponed.
235.3 Detention, and deferred inspection.
235.4 Endorsement of documents.
235.5 Preinspection.
235.6 Referral to immigration judge.
235.7 Referral of certain cases to district director.
235.8 Temporary exclusion.
235.9 Conditional entries.
235.10 U.S. Citizen Identification Card.

AUTHORITY: Secs. 101, 103, 212, 213, 221, 234, 235, 236, 237, 238, 242, 66 Stat. 166, 173, 182, as amended, 188, 191, 198, 200, 201, 202, 208, as amended; 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252, unless otherwise noted.

§ 235.1 Scope of examination.

(a) *General.* Application to enter the United States shall be made in person to an immigration officer at a U.S. port of entry enumerated in Part 100 of this chapter at a time when the immigration office at the port is open for inspection.

(b) *U.S. citizens.* A person claiming U.S. citizenship must establish that fact to the examining immigration officer's satisfaction and must present a U.S. passport if such passport is required under the provisions of 22 CFR Part 53. If such an applicant for admission fails to satisfy the examining immigration officer that he is a U.S. citizen, he shall thereafter be inspected as an alien.

(c) *Alien members of United States Armed Forces and members of a force of a NATO country.* Any alien member of the United States Armed Forces who is in the uniform of, or bears documents identifying him/her as a member of, such Armed Forces, and who is coming to or departing from the United States under official orders or permit of such Armed Forces is not subject to the exclusion provisions of the Act. A member of the force of a NATO country signatory to Article III of the Status of Forces Agreement seeking to enter the United States under official orders is exempt from the control provision of the Act. Any alien who is a member of either of the foregoing classes may, upon request, be inspected under the provisions of the Act, and his/her entry as an alien may be recorded. If the alien does not appear to the examining immigration officer to be clearly and beyond a doubt entitled to enter the United States under the provisions of the Act, the alien shall be so informed and his/her entry shall not be recorded.

(d) *Qualifications for aliens.* The following general qualifications and requirements shall be met by each alien seeking to enter the United States for permanent, indefinite, or temporary stay, and regardless of the purpose for which he/she seeks to enter:

(1) He/she shall present whatever documents are required and shall establish to the satisfaction of the immigration officer that he/she is not subject to exclusion under the immigration laws, Executive Orders, or Presidential Proclamations and is entitled under all of the applicable provisions of the immigration laws and this chapter to enter the United States.

(2) For the purpose of this part, any alien coming to a United States port from a foreign port, from an outlying possession of the United States, from Guam, Puerto Rico, or the Virgin Islands of the United States, or from another port of the United States at which examination under this part was not completed, shall be regarded as an arrival.

(3) Any person, including an alien crewman, passing through the Canal Zone on board a vessel which enters and clears at the Canal Zone port only to transit the Zone, to refuel, or to land passengers or crewmen for medical treatment, shall not be regarded as coming from a foreign port solely by reason of such passage.

(4) Any person including an alien crewman, on board a vessel which after arrival at a United States port of entry passes the Great Lakes seaway en route to another United States port and which enters and clears at points in Canada only to transit the seaway, to refuel, or to land passengers or crewmen for medical treatment, shall not be regarded as coming from a foreign port solely by reason of such passage.

(5) Any person seeking to enter the United States, including an alien crewman, on board a vessel en route from one United States port to another United States port shall not be regarded as coming from a foreign port solely by reason of the vessel's stop at Freeport, Bahamas, for bunkering only.

(6) Any person, including an alien crewman on board a vessel en route to the United States solely for bunkering purposes or an aircraft en route to the United States solely for refueling purposes, who does not seek to enter the United States, shall be regarded as not arriving for purposes of immigration.

(7) The immigration inspection of any person, including an alien crewman, on board a vessel or aircraft, may be postponed to an onward port of arrival, if the vessel or aircraft will only bunker or refuel at the first port of call.

(e) *U.S. citizens, lawful permanent residents of the United States, Canadian nationals, and other residents of Canada having a common nationality with Canadians, entering the United States by small craft.* Upon being inspected by an immigration officer and found eligible for admission as a citizen of the United States, or found eligible for admission as a lawful permanent resident of the United States, or in the case of a Canadian national or other resident of Canada having a common nationality with Canadians being found eligible for admission as a temporary visitor for pleasure, a person who desires to enter the United States from Canada in a small pleasure craft of less than 5 net tons without merchandise may be issued, without application or fee, Form I-68, Canadian Border Boat Landing Card, and may thereafter enter the United States along with the immediate shore area of the United States on the body of water designated on the Form I-68 from time to time for the duration of that navigation season without further inspection. In the case of a Canadian national or other resident of Canada having a common nationality with Canadians, the Form I-68 shall be valid only for the purpose of visits not to exceed 72 hours and only if the alien will remain in nearby shopping areas, nearby residential neighborhoods, or other similar areas adjacent to the immediate shore area of the United States. If the bearer of Form I-68 seeks to enter the United States by means other than small craft of less than 5 net tons without merchandise, or if he or she seeks to enter the United States for other purposes, or if he or she is an alien, other than a lawful permanent resident alien of the United States, and intends to proceed beyond an area adjacent to the immediate shore area of the United States, or remains in the United States longer than 72 hours, he or she must apply for admission at a United States port of entry.

(f) *Arrival/Departure Record, Form I-94*—(1) *Nonimmigrants.* Each nonimmigrant alien except as indicated below, who is admitted to the United States shall be issued a completely executed Form I-94 which must be endorsed to show: date and place of admission, period of admission, and nonimmigrant classification. A nonimmigrant alien who will be making frequent entries into the United States over its land borders may be issued a Form I-94 which is valid for any number of entries during a specified six-month period. A Form I-94 is not required by:

(i) Any nonimmigrant alien described in § 212.1(a) of this chapter and 22 CFR 41.125(a) who is admitted as a visitor for business or pleasure or admitted to proceed in direct transit through the United States;

(ii) Any nonimmigrant alien residing in the British Virgin Islands who was admitted only to the U.S. Virgin Islands as a visitor for business or pleasure under § 212.1(b) of this chapter;

(iii) Any Mexican national in possession of a valid nonresident alien Mexican border crossing card who is admitted as a border crosser or nonimmigrant visitor at a Mexican border port of entry for a period not to exceed 72 hours to visit within 25 miles of the border;

(iv) Any Mexican national in possession of a valid Mexican passport and a multiple-entry nonimmigrant visa issued under section 101(a)(15)(B) of the Act who is admitted at a Mexican border port of entry as a nonimmigrant visitor for a period not to exceed 72 hours to visit within 25 miles of the border; or

(v) Any Mexican national eligible for a Mexican Border Visitors Permit, Form I-444, under paragraph (g) of this section.

(vi) Bearers of Mexican diplomatic or official passports described in § 212.1(c-1) of this chapter.

(2) *Paroled aliens.* Any alien paroled into the United States under section 212(d)(5) of the Act, including any alien crewmember, shall be issued a completely executed Form I-94 which must include (i) date and place of parole, (ii) period of parole, and (iii) conditions under which the alien is paroled into the United States.

(g) *Mexican Border Visitors Permit, Form I-444.* (1) Any Mexican national exempt from issuance of a Form I-94 under paragraph (f) 1 (iii) or (iv) of this section shall be issued a Mexican Border Visitors Permit, Form I-444, whenever (i) the period of admission sought is more than 72 hours but not more than 30 days or (ii) the applicant desires to travel more than 25 miles from the Mexican border but within the five-state area of Arizona, California, Nevada, New Mexico, or Texas.

(2) If, after entry and issuance of the Form I-444, the alien seeks to remain for longer than 30 days or to proceed outside of the five-state area, the alien must apply for permission at a Service office located within the five-state area.

[32 FR 9627, July 4, 1967, as amended at 32 FR 11628, Aug. 11, 1967; 45 FR 70428, Oct. 24, 1980; 46 FR 43826, Sept. 1, 1981; 47 FR 49953, Nov. 4, 1982; 49 FR 33434, Aug. 23, 1984]

§ 235.2 Examination postponed.

Whenever an alien on arrival is found or believed to be suffering from a disability which renders it impractical to proceed with the examination under the Act, the examination of such alien, members of his family concerning whose admissibility it is necessary to have such alien testify, and any accompanying aliens whose protection or guardianship will be required should such alien be found inadmissible shall be deferred for such time and under such conditions as the district director in whose district the port is located imposes.

[22 FR 9791, Dec. 6, 1957]

§ 235.3 Detention and deferred inspection.

(a) *Prior to inspection.* All persons arriving at a port in the United States by vessel or aircraft shall be detained aboard the vessel or at the airport of arrival by the master, commanding officer, purser, person in charge, agent, owner, or consignee of such vessel or aircraft until admitted or otherwise permitted to land by an officer of the Service. Notice or order to detain shall not be required.

(b) *Aliens with no documentation or false documentation.* Any alien who appears to the inspecting officer to be inadmissible, and who arrives without documents (except an alien for whom documentary requirements are waived under § 211.1(b)(3) or § 212.1 of this chapter) or who arrives with documentation which appears on its face to be false, altered, or to relate to another person, or who arrives at a place other than a designated port of entry, shall be detained in accordance with section 235(b) of the Act. Parole of such aliens shall only be considered in accordance with § 212.5(a) of this chapter.

(c) *Aliens with documents.* Any alien who appears to the inspecting officer to be inadmissible, but who does not fall within paragraph (b) of this section, may be detained, paroled, or paroled for deferred inspection by the inspecting officer. In determining whether or not an alien shall be detained, paroled or paroled for deferred inspection, the inspecting officer shall consider the likelihood that the alien will abscond or pose a security risk.

(d) *Carrier custody.* Any alien subject to detention under paragraph (b) or (c) of this section may be placed in the custody of the carrier if the carrier has entered into a contract with the Attorney General under section 238 of the Act. If in the opinion of the examining immigration officer it is not practical to resolve a question of admissibility at the time of arrival of a passenger on a vessel or aircraft, the officer shall execute Form I-259 to notify the agent for the vessel or aircraft and the master or commanding officer, if available, that the passenger is to be presented for further inspection. The Form I-259 shall list the name of each such passenger and shall contain instructions as to the date and place the passenger is to be presented for continued inspection or further proceedings under the Act. If the place specified is a designated port of entry to which the transportation company has carried or has contracted to carry the passenger, the transportation company shall remain under the obligation, described in the preceding paragraph, to prevent an unauthorized landing, unless the transportation company has been relieved of this obligation by removal under section 233(a) of the Act at the direction of the Service or unless the Service has paroled the alien under section 212(d)(5) of the Act without directing the carrier in writing to present the alien for further inspection. The term port of entry as used in this paragraph includes a Service district office or suboffice within the city or town or in local commuting distance of the seaport or airport at which the passenger arrived or of the onward seaport or airport specified by the examining immigration officer as the place for completion of inspection. In cases where carrier custody appears to be inadequate to protect the safety of the public, or where the security precautions which the carrier will take appear to be inadequate or inappropriate to detain the alien, custody may be assumed by the Service.

(Secs. 103, 233, 235 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1103, 1223, 1225)

[47 FR 30046, July 9, 1982, as amended at 47 FR 46494, Oct. 19, 1982]

§ 235.4 Endorsement of documents.

The admitting immigration officer shall, by means of a stamp, record in each passport required to be presented the word "Admitted" and the date and place of admission. The same information shall, upon admission, be recorded on any immigrant visa, reentry permit or required Form I-94. The "I-94 Departure Record" part of Form I-94, properly endorsed, shall be returned to the alien for retention while in the United States. At the time of departure from the United States, the alien shall surrender the I-94 Departure Record to a representative of the carrier transporting the alien.

[48 FR 35349, Aug. 4, 1983]

§ 235.5 Preinspection.

(a) *In United States territories and possessions.* In the case of any aircraft proceeding from Guam, Puerto Rico, or the Virgin Islands of the United States destined directly and without touching at a foreign port or place to any other of such places or to one of the States of the United States or the District of Columbia, the examination required by the act of the passengers and crew may be made prior to the departure of the aircraft, and in such event, final determination of admissibility shall be made immediately prior to such departure. The examination shall be conducted in accordance with sections 234, 235, 236, and 237 of the act and this part and Parts 236 and 237 of this chapter, except that if it appears to the examining immigration officer that any person in the United States being examined under this section is prima facie deportable from the United States, further action with respect to his examination shall be deferred and further proceedings conducted as provided in section 242 of the Act and Part 242 of this chapter. When the foregoing inspection procedure is applied to any aircraft, persons examined and found admissible shall be placed aboard the aircraft, or kept at the airport separate and apart from the general public until they are permitted to board the aircraft. No other person shall be permitted to depart on such aircraft until and unless he is found to be admissible as provided in this section.

(b) *In contiguous territory and adjacent islands.* On and after December 24, 1952, in the case of any aircraft or vessel proceeding directly from a port or place in foreign contiguous territory or adjacent islands to a port of entry in the United States, the examination and inspection of passengers and crew required by the Act and final determination of admissibility may be made immediately prior to such departure at the port or place in foreign contiguous territory or adjacent islands and shall have the same effect under the act as though made at the destined port of entry in the United States.

(c) *Preclearance of travelers in a foreign country; reimbursable costs.* (1) Preclearance is the examination and inspection of travelers at foreign places where Service personnel are stationed for that purpose.

(2) At the request of a carrier, travelers on a direct route to the United States from a foreign place described in paragraph (1) of this section may be precleared prior to departure from such place. A charge based on the excess cost to the Immigration and Naturalization Service of providing preclearance services as defined in paragraph (c)(3) of this section shall be made to the carrier.

(3) The reimbursable excess cost is the difference between the cost of examining and inspecting travelers upon arrival in the United States assuming no preclearance was provided, and the cost of providing preclearance for travelers at the place of departure. Such excess cost shall include all items attributable to the preclearance operation. This does not include the salary of personnel regularly assigned to a preclearance station other than approved salary differentials related to the foreign assignments and the salary of relief details made necessary by reason of the nature of the operation. In addition, such cost shall include the following allowances and expenses:

(i) Foreign quarters;

(ii) Cost-of-living allowances;

(iii) Education allowances;

(iv) Transportation cost incident to the assignment to the foreign station and return, including transportation of family and household effects;

(v) Home leave and associated transportation costs; and

(vi) Equipment, supplies and administrative costs including costs of supervising the preclearance installation.

(4) The reimbursable excess cost described in paragraph (c)(3) of this section shall be determined for each preclearance installation. On the basis of the excess cost figure for each installation, the excess cost of providing preclearance service for a biweekly pay period shall be determined. The initial schedule of biweekly excess cost will be based on the actual excess cost for Fiscal Year 1984. Thereafter a quarterly (ending with the pay period closely corresponding to June 30, September 30, December 31, and March 31) cost analysis will be conducted and the schedule of biweekly excess costs will be adjusted so that the current cost schedule will reflect the actual excess costs of the previous quarter. Such schedules of biweekly costs for each installation shall be published in the FEDERAL REGISTER. The biweekly excess cost in effect at an installation at the time the charge is made shall be used in calculating the prorated charge for preclearance service for each carrier in accordance with paragraph (c)(5) of this section.

(5) The charge to each carrier for preclearance service shall be its prorated share of the applicable excess cost prorated to the vessel receiving such services during the billing period on the following basis:

(i) Five percent shall be distributed equally among carriers serviced.

(ii) Ten percent shall be distributed proportionately as the number of clearances for each carrier serviced bears to the total number of clearances.

(iii) Eighty-five percent shall be distributed proportionately as the number of passengers and/or crew serviced for each carrier bears to the number of passengers and/or crew serviced.

(6) Immigration clearances for which overtime compensation is provided for by the Act of March 2, 1931 and expenses recovered thereunder are in no way affected by this section.

[23 FR 3997, June 7, 1958, as amended at 24 FR 2583, Apr. 3, 1959; 50 FR 11842, Mar. 26, 1985]

§ 235.6 Referral to immigration judge.

(a) *Notice.* If, in accordance with the provisions of section 235(b) of the Act, the examining immigration officer detains an alien for further inquiry before an immigration judge, he shall immediately sign and deliver to the alien a Notice to Alien Detained for Hearing by an Immigration Judge

(Form I-122). If the alien is unable to read or understand the notice, it shall be read and explained to him by an employee of the Service, through an interpreter, if necessary, prior to such further inquiry. In addition, the alien shall be advised of his right to representation by counsel of his choice at no expense to the Government, and of the availability of free legal services programs qualified under Part 292a of this chapter and organizations recognized pursuant to § 292.2 of this chapter, located in the district where the alien is being detained. He shall also be furnished with a list of such programs.

(b) *Certification for mental condition; medical appeal.* An alien certified under paragraph (1), (2), (3), (4), or (5) of section 212(a) of the Act shall be advised by the examining immigration officer that he may appeal to a board of medical officers of the United States Public Health Service pursuant to section 234 of the Act. If such an appeal is taken, the district director shall arrange for the convening of the medical board.

(Sec. 103; 8 U.S.C. 1103, Interpret or apply secs. 242 and 292 (8 U.S.C. 1252 and 1362))

[24 FR 6477, Aug. 12, 1959, as amended at 44 FR 4653, Jan. 23, 1979]

§ 235.7 Referral of certain cases to district director.

If the examining immigration officer has reason to believe that the cause of an alien's excludability can readily be removed by the posting of a bond in accordance with section 213 of the Act, or by the exercise of section 211, section 212(d) (3) or (4), or section 212(c) of the Act, or by granting permission to reapply for admission after deportation or removal, he may in lieu of detaining the alien for hearing in accordance with section 235(b) and section 236 of the Act refer the alien's case to the district director within whose district the port is located for consideration of such action and defer further examination pending the district director's decision. Refusal of a district director to authorize admission under section 213, or to grant an application for the benefits of section 211, section 212(d) (3) or (4), or section 212(c), or to grant permission to reapply for admission after deportation or removal shall be without prejudice to the renewal of such application or the authorizing of such admission by the special inquiry officer without additional fee.

[28 FR 4251, Apr. 30, 1963]

§ 235.8 Temporary exclusion.

(a) *Report.* Any immigration officer who temporarily excludes any alien under section 235(c) of the Act shall report the action promptly to the district director who has administrative jurisdiction over the port at which the alien arrived. The immigration officer shall, if possible, take a brief sworn question-and-answer statement from the alien, and the alien shall be notified by personal service of Form I-147 of the action taken and the right to make written representations. If the subject of the report is an alien who seeks to enter the United States other than under section 101(a)(15)(D) of the Act, the district director shall forward the report to the regional commissioner for further action as provided in paragraph (b) of this section.

(b) *Action by regional commissioner.* If the regional commissioner is satisfied that the alien is inadmissible to the United States under paragraph (27), (28), or (29) of section 212(a) of the Act and if the regional commissioner, in the exercise of his discretion, concludes that such inadmissibility is based on information of a confidential nature the disclosure of which would be prejudicial to the public interest, safety, or security, he may deny any hearing or further hearing by a special inquiry officer and order such alien excluded and deported, or enter such other order in the case as he deems appropriate. In any other case the regional commissioner may direct that an immigration officer shall further examine the alien as to his admissibility or that the alien be given a hearing or further hearing before a special inquiry officer.

(c) *Finality of decision.* The decision of the regional commissioner provided for in paragraph (b) of this section shall be final and no appeal may be taken therefrom. The decision of the regional commissioner shall be in writing, signed by him and, unless it contains confidential matter, a copy shall be served on the alien. If the decision contains confidential matter, a separate order showing only the ultimate disposition of the case shall be signed by the regional commissioner and served on the alien.

(d) *Hearing by immigration judge.* If the regional commissioner directs that an alien temporarily excluded be given a hearing or further hearing before an immigration judge, the hearing and all further proceedings in the matter shall be conducted in accordance with the provisions of section 236 and other applicable sections of the Act to the same extent as though the alien had been referred to an immigration judge by the examining immigration officer; except, that if confidential information, not previously considered in the matter, is adduced supporting the exclusion of the alien under paragraph (27), (28), or (29) of section 212(a) of the Act, the disclosure of which, in the discretion of the immigration judge, may be prejudicial to the public interest, safety, or security, the immigration judge may again temporarily exclude the alien under the authority of section 235(c) of the Act and further action shall be taken as provided in this section.

[22 FR 9791, Dec. 6, 1957; 22 FR 9519, Nov. 28, 1957, as amended at 48 FR 8, Jan. 3, 1983; 48 FR 30350, July 1, 1983]

§ 235.9 Conditional entries.

(a) *Inspection of conditional entrant and refugee parolee as to admissibility for permanent residence.* Each alien who has been admitted under section 203(a)(7) as a conditional entrant, or paroled under section 212(d)(5) of the Act as a refugee prior to September 30, 1980, and who is not otherwise eligible for retroactive adjustment of status to permanent resident, shall be required to appear before an immigration officer within one year following conditional entry or parole. If over 14 years of age, the conditional entrant or parolee shall be interrogated under oath by an immigration officer and a determination of admissibility shall be made under parts 235 and 236 of this chapter. Except as provided in parts 245 and 249 of this chapter, an application under this part shall be the sole method of requesting the exercise of discretion under section 212 (g), (h), or (i) of the Act, insofar as it relates to the excludability of an alien in the United States. Any alien who is inspected and admitted under this part who is eligible for and wishes to apply for naturalization immediately shall be processed under § 235.9(b)(3) of this chapter.

(b) *Request to "roll back" permanent residence date by permanent resident who was paroled into the United States as a refugee*—(1) *General.* A request by a permanent resident who was originally paroled into the United States as a refugee before September 30, 1980 to "roll back" the date of acquiring permanent residence to the date of original parole as a refugee shall be made in writing to the district director having jurisdiction over the applicant's place of residence. Each request must be accompanied by the Alien Registration Card, Form I-151 or Form I-551, previously issued to the applicant, and completed forms G-325 and FD-258. Where an applicant is eligible for and wishes to apply immediately for naturalization, the request must contain a statement to that effect. The decision on the request shall be made by the district director. There is no appeal from the district director's decision.

(2) *Applicant for "roll back" who is not eligible for or who does not wish to file an application for naturalization immediately.* Where the recipient of a "roll back" would not be immediately eligible to apply for naturalization, or if eligible, does not wish to do so immediately, the "roll back" request must be accompanied by three identical color photographs taken within the past thirty days. The photographs must comply with the requirements for an ADIT card. These requirements may be obtained from any office of the Immigration and Naturalization Service. If the request is approved, the applicant shall be furnished a new Alien Registration Card bearing the new date lawful admission for permanent residence is recorded.

(3) *Where "roll back" would make applicant immediately eligible for naturalization and applicant intends to*

file the application immediately. Where a "roll back" of the date of permanent residence under this regulation would make the applicant immediately eligible for naturalization, and the applicant indicates a desire to file an application for naturalization immediately, the district director shall receive the "roll back" application and process it. If the "roll back" application is granted, the new date lawful admission for permanent residence is recorded shall be entered on Form I-181 and placed in the applicant's file. The applicant shall then be furnished the appropriate forms and instructions for filing the application for naturalization. A new Alien Registration Card need not be issued under these circumstances. Where a new Alien Registration Card is not issued, Form I-181 will be so noted.

(c) *Termination of conditional entrant or refugee parole status.* Whenever a district director has reason to believe that a conditional entrant under section 203(a)(7) of the Act or an alien paroled or a refugee under section 212(d)(5) of the Act before September 30, 1980, whose status has not otherwise been terminated or changed, it or has become inadmissible to the United States under any provision (except paragraph (20)) of section 212(a) of the Act, the district director shall, in the case of a parolee, comply with § 212.5(d) of this chapter, and thereafter serve on either class of alien, Notice to Alien Detained for Hearing Before Immigration Judge, Form I-122, in accordance with § 235.6 of this part. The alien shall be referred for a hearing before an immigration judge under sections 235, 236, and 237 of the Act and Parts 235, 236, and 237 of this chapter. If the immigration judge determines that the alien is not inadmissible to the United States or, if inadmissible, that the alien is prima facie eligible for a waiver on the grounds of excludability under section 212 (g), (h), or (i) of the Act, the judge shall order the proceedings terminated and refer the matter to the district director for further proceedings under section 203(g) of the Act. The order shall be without prejudice to renewing proceedings or instituting new proceedings under this section. There is no appeal from a decision by a district director denying an application for a waiver under section 212 (g), (h), or (i) of the Act, but the denial is without prejudice to the renewal of the application in proceedings before an immigration judge. If the immigration judge determines that the alien is inadmissible to the United States for permanent residence under any provision of the Act, except section 212(a)(20), and that the alien is not entitled to the benefits of section 212 (g), (h), or (i) of the Act, the judge shall order the termination of the alien's conditional entry and make such further order as may be proper. The decision of the immigration judge may be appealed under § 236.7 of this chapter.

[48 FR 8, Jan. 3, 1983]

§ 235.10 U.S. Citizen Identification Card.

(a) *General.* The U.S. Citizen Identification Card, Form I-197, is no longer issued by the Service but valid existing cards will continue to be acceptable documentation of U.S. citizenship. Possession of the identification card is not mandatory for any purpose. A U.S. Citizen Identification Card remains the property of the United States. Because the identification card is no longer issued, there are no provisions for replacement cards.

(b) *Surrender and voidance*—(1) *Institution of proceeding under section 236, 242 or 342 of the Act.* A U.S. citizen identification card must be surrendered provisionally to a Service office upon notification by the district director that a proceeding under section 236, 242 or 342 of the Act is being instituted against the person to whom the card was issued. The card shall be returned to the person if the final order in the proceeding does not result in voiding the card under this paragraph. A U.S. Citizen Identification Card is automatically void if the person to whom it was issued is determined to be an alien in a proceeding conducted under section 236 or 242 of the Act, or if a certificate, document, or record relating to that person is cancelled under section 342 of the Act.

(2) *Investigation of validity of identification card.* A U.S. Citizen Identifi-

cation Card must be surrendered provisionally upon notification by a district director that the validity of the card is being investigated. The card shall be returned to the person who surrendered it if the investigation does not result in a determination adverse to his or her claim to be a United States citizen. When an investigation results in a tentative determination adverse to the applicant's claim to be a United States citizen, the applicant shall be notified by certified mail directed to his or her last known address. The notification shall inform the applicant of the basis for the determination and of the intention of the district director to declare the card void unless within 30 days the applicant objects and demands an opportunity to see and rebut the adverse evidence. Any rebuttal, explanation, or evidence presented by the applicant must be included in the record of proceeding. The determination whether the applicant is a United States citizen must be based on the entire record and the applicant shall be notified of the determination. If it is determined that the applicant is not a U.S. citizen, the applicant shall be notified of the reasons, and the card deemed void. There is no appeal from the district director's decision.

(3) *Admission of alienage.* A U.S. Citizen Identification Card is void if the person to whom it was issued admits in a statement signed before an immigration officer that he or she is an alien and consents to the voidance of the card. Upon signing the statement the card must be surrendered to the immigration officer.

(4) *Surrender of void card.* A void U.S. Citizen Identification Card which has not been returned to the Service must be surrendered without delay to an immigration officer or to the issuing office of the Service.

(c) *U.S. Citizen Identification Card previously issued on Form I-179.* A valid U.S. Citizen Identification Card issued on Form I-179 continues to be valid subject to the provisions of this section.

[48 FR 9504, Mar. 7, 1983]

PART 236—EXCLUSION OF ALIENS

Sec.
236.1 Authority of immigration judges.
236.2 Hearing.
236.3 Application for asylum.
236.4 Renewal of application for adjustment of status under section 245 of the Act.
236.5 Decision of the immigration judge; notice to the applicant.
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236.8 Fingerprinting of excluded aliens.

AUTHORITY: Secs. 103, 212, 234, 235, 236, 292, 66 Stat. 173, 182, as amended, 198, 200, 238; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1362, unless otherwise noted.

§ 236.1 Authority of immigration judges.

In determining cases referred for further inquiry as provided in section 235 of the Act, immigration judges shall have the powers and authority conferred upon them by the Act and this chapter. Subject to any specific limitation prescribed by the Act and this chapter, immigration judges shall also exercise the discretion and authority conferred upon the Attorney General by the Act as is appropriate and necessary for the disposition of such cases.

[42 FR 46045, Sept. 14, 1977]

§ 236.2 Hearing.

(a) *Opening.* Exclusion hearings shall be closed to the public, unless the alien at his own instance requests that the public, including the press, be permitted to attend; in that event, the hearing shall be open, provided that the alien states for the record that he is waiving the requirement in section 236 of the Act that the inquiry shall be kept separate and apart from the public. When the hearing is to be open, depending upon physical facilities, reasonable limitation may be placed upon the number in attendance at any one time, with priority being given to the press over the general public. The Immigration Judge shall ascertain whether the applicant for admission is the person to whom Form I-122 was previously delivered by the examining immigration officer as provided in Part 235 of this chapter; enter a copy of such form in evidence as an exhibit in the case; inform the applicant of the nature and purpose of the hearing; advise him of the privilege of being represented by an attorney of his own choice at no expense to the Government, and of the availability of free legal services programs qualified under Part 292a of this chapter and organizations recognized pursuant to § 292.2, of this chapter located in the district where his exclusion hearing is to be held; and shall ascertain that the applicant has received a list of such programs; and request him to ascertain then and there whether he desires representation; advise him that he will have a reasonable opportunity to present evidence in his own behalf, to examine and object to evidence against him, and to cross-examine witnesses presented by the Government; and place the applicant under oath.

(b) *Procedure.* The immigration judge shall receive and adduce material and relevant evidence, rule upon objections, and otherwise regulate the course of the hearing.

(c) *General attorney.* The district director shall direct the chief legal officer to assign a general attorney to each case in which an applicant's nationality is in issue. The district director may direct the chief legal officer to assign a general attorney to any case in which the district director deems such assignment necessary or advantageous. The duties of the general attorney include, but are not limited to, the presentation of evidence and the interrogation, examination, and cross-examination of the applicant and other witnesses. Nothing contained herein diminishes the authority of an immigration judge to conduct proceedings under this part.

(d) *Depositions.* The procedures specified in § 242.14(e) of this chapter shall apply.

(e) *Record.* The hearing before the immigration judge, including the testimony and exhibits, the immigration judge's decision, and all written orders, motions, appeals, and other papers filed in the proceeding shall constitute the record in the case. The hearing shall be recorded verbatim except for statements made off the record with the permission of the immigration judge.

(Sec. 103; 8 U.S.C. 1103, Interpret or apply secs. 242 and 292 (8 U.S.C. 1252 and 1362))

[42 FR 46045, Sept. 14, 1977, as amended at 44 FR 4653, Jan. 23, 1979; 46 FR 43956, Sept. 2, 1981]

§ 236.3 Application for asylum.

(a) *Applications on and after November 1, 1977.* (1) An alien subject to exclusion proceedings under this part who believes that he would be subject to persecution in the country to which he would be returned under an order of exclusion and deportation because of race, religion, nationality, membership in a particular social group, or political opinion may apply for asylum on Form I-589. Four copies of such application shall be submitted to the docket clerk for the immigration court before an exclusion hearing is commenced. If application has not been made prior to commencement of the hearing, the hearing may be adjourned by the immigration judge for a period of time not to exceed 30 days to permit the application to be filed. Upon receipt of the Form I-589, the docket clerk shall send two copies of Form I-589 with supporting evidence to the Office of Refugee and Migration Affairs of the Bureau of Human Rights and Humanitarian Affairs of the Department of State, and shall calendar the case for hearing, which shall be deferred for a period not to exceed 30 days pending receipt of the Department of State's views. The reply, if any, from the Department of State, unless classified under Executive Order No. 11652 (37 FR 5209, March 19, 1972), as requiring protection from unauthorized disclosure in the interest of national security shall be given by the docket clerk to the alien and to the trial attorney.

(2) During the exclusion hearing, the applicant shall be examined under oath on his application and may present evidence on his behalf. The applicant has the burden of satisfying the Immigration Judge that he would be subject to persecution on account of race, religion, nationality, membership in a particular social group, or political opinion as claimed. The Trial

Attorney may also present evidence for the record, and may submit information not of record to be considered by the Immigration Judge provided that such information is classified under Executive Order No. 11652 and that the Immigration Judge or the Board has determined that such information is relevant. When the Immigration Judge receives such nonrecord information he shall inform the applicant thereof and shall also inform him whether it concerns conditions generally in a specified country or the applicant himself. Whenever he believes he can do so consistently with safeguarding both the information and its source, the Immigration Judge should state more specifically the general nature of the information in order that the applicant may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that such information is material to the decision. An alien seeking admission to the United States at a land border port will be processed in accordance with the provisions of § 108.1 of this chapter.

(b) *Applications prior to November 1, 1977.* Any person under a pending order of exclusion and deportation who prior to November 1, 1977, has submitted an application for asylum which was denied by a district director but was not considered by an Immigration Judge may, prior to August 10, 1979, submit a motion to reopen the exclusion proceedings, without fee, to have such application decided by an Immigration Judge in accordance with paragraph (a) of this section.

(Sec. 103; 8 U.S.C. 1103; interpret or apply sec. 212(d)(5) and sec. 236 (8 U.S.C. 1182(d)(5) and 1226))

[44 FR 21259, Apr. 10, 1979]

§ 236.4 Renewal of application for adjustment of status under section 245 of the Act.

An adjustment application by an alien paroled under section 212(d)(5) of the Act, which has been denied by the district director, may be renewed in exclusion proceedings under section 236 of the Act before an immigration judge under the following two conditions: First, the denied application must have been properly filed subsequent to the applicant's earlier inspection and admission to the United States; second, the applicant's later absence from and return to the United States must have been under the terms of an advance parole authorization on Form I-512 granted to permit the applicant's absence and return to pursue the previously filed adjustment application.

(Sec. 103; 8 U.S.C. 1103. Interpret or apply secs. 236 and 245, 8 U.S.C. 1226 and 1255)

[43 FR 16445, Apr. 19, 1978]

§ 236.5 Decision of the immigration judge; notice to the applicant.

(a) *Contents.* The decision of the immigration judge may be oral or written. It shall include a discussion of the evidence and findings as to excludability; the formal enumeration of findings is not required. The decision shall be concluded with the order of the immigration judge.

(b) *Oral decision.* An oral decision shall be stated for the record by the immigration judge at the conclusion of the hearing and in the presence of the applicant. When entitled to appeal from an adverse decision of the immigration judge, the applicant shall be so advised and shall be required to state then and there whether he wishes to appeal. At his request, the applicant shall be furnished with a typewritten transcript of the oral decision of the immigration judge.

(c) *Written decision.* When the decision of the immigration judge is in writing, the district director shall serve a signed copy thereof on the applicant, together with the notice referred to in § 3.3 of this chapter.

(d) *Advice to alien ordered excluded.* An alien ordered excluded shall be furnished with Form I-296, Notice to Alien Ordered Excluded by Immigration Judge, at the time of an oral decision by the immigration judge or upon service of a written decision.

(e) *Holders of refugee travel documents.* Aliens who are the holders of valid unexpired refugee travel documents may be ordered excluded only if they are found to be inadmissible under section 212(a) (9), (10), (12), (23), (27), (28), (29), or (31) of the Act.

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and it is determined that on the basis of the acts for which they are inadmissible there are compelling reasons of national security or public order for their exclusion. If the immigration judge finds that the alien is inadmissible but determines that there are no compelling reasons of national security or public order for exclusion, the immigration judge shall remand the case to the district director for parole.

(Sec. 103; 8 U.S.C. 1103. Interpret or apply secs. 236 and 245, 8 U.S.C. 1226 and 1255)

[42 FR 46045, Sept. 14, 1977. Redesignated at 43 FR 16445, Apr. 19, 1978]

§ 236.6 Finality of order.

The order of the immigration judge shall be final except when a case has been certified as provided in Part 3 or Part 103 of this chapter, or when an appeal is taken to the Board of Immigration Appeals. An immigration judge shall have authority to certify his decision in any case to the Board of Immigration Appeals when it involves an unusually complex or novel question of law or fact. When the order of the Immigration Judge is to admit the applicant, or to grant asylum by parole under section 212(d)(5) of the Immigration and Nationality Act, or to grant the application for adjustment under the conditions specified in § 245.2(a) of this chapter, the Immigration Judge shall place the applicant on notice that the decision is subject to appeal by the district director as provided in § 236.7(c).

(Sec. 103; 8 U.S.C. 1103. Interpret or apply secs. 236 and 245, 8 U.S.C. 1226 and 1255)

[42 FR 46045, Sept. 14, 1977. Redesignated and amended at 43 FR 16445, Apr. 19, 1978; 44 FR 21259, Apr. 10, 1979]

§ 236.7 Appeals.

(a) *In general.* Pursuant to Part 3 of this chapter, an appeal shall lie to the Board of Immigration Appeals from a decision of the immigration judge under this part, except as limited by section 236(d) of the act.

(b) *By applicant.* When the applicant states that he wishes to appeal from the immigration judge's oral decision, he shall be required then and there to submit completed Form I-290A. At his request, the applicant shall be allowed 10 days from the date of the oral decision in which to file a brief. An appeal from the immigration judge's written decision shall be taken within 13 days after mailing.

(c) *By district director.* The district director may, within five days from date of decision, appeal from an order of the Immigration Judge to admit the applicant, or to grant asylum, or to grant the application for adjustment. The applicant shall be notified in writing when an appeal is taken by the district director and advised that he will be allowed 5 days from the receipt of notification in which to submit written representations for transmittal to the Board with the record in the case.

(Sec. 103; 8 U.S.C. 1103. Interpret or apply secs. 236 and 245, 8 U.S.C. 1226 and 1255; sec. 103; 8 U.S.C. 1103. Interpret or apply sec. 212(d)(5) and sec. 236 (8 U.S.C. 1182(d)(5) and 1226))

[42 FR 46045, Sept. 14, 1977. Redesignated and amended at 43 FR 16445, Apr. 19, 1978; 44 FR 21259, Apr. 10, 1979]

§ 236.8 Fingerprinting of excluded aliens.

Every alien 14 years of age or older who is excluded from admission to the United States by an immigration judge shall be fingerprinted, unless during the preceding year he has been fingerprinted at an American consular office.

(Sec. 103; 8 U.S.C. 1103. Interpret or apply secs. 236 and 245, 8 U.S.C. 1226 and 1255)

[42 FR 46045, Sept. 14, 1977. Redesignated at 43 FR 16445, Apr. 19, 1978]

PART 237—DEPORTATION OF EXCLUDED ALIENS

Sec.

237.1 Stay of deportation of excluded alien.
237.2 Notice to surrender for deportation.
237.3 Cost of maintenance not assessed.
237.4 Imposition of penalty.
237.5 Notice to transportation line of alien's exclusion.
237.6 Deportation.

AUTHORITY: Secs. 103, 233, 237, 245, 280, 66 Stat. 173, 197, 201, 214, 230; 8 U.S.C. 1103, 1223, 1227, 1255, 1330.

§ 237.1 Stay of deportation of excluded alien.

The district director in charge of the port of arrival may stay the immediate deportation of an excluded alien pursuant to sections 237 (a) and (d) of the act under such conditions as he may prescribe.

[23 FR 5818, Aug. 1, 1958]

§ 237.2 Notice to surrender for deportation.

An alien who has been finally excluded pursuant to Part 236 of this chapter may at any time surrender himself to the custody of the Service and shall surrender himself to such custody upon notice in writing of the time and place for his surrender. The Service may take the alien into custody at any time. An alien taken into custody either upon notice to surrender or by arrest shall not be deported less than 72 hours thereafter without his consent thereto filed in writing with the district director in charge of the place of his detention. An alien in foreign contiguous territory shall be informed that he may remain there in lieu of surrendering to the Service, but that he will be deemed to have acknowledged the execution of the order of exclusion and deportation in his case upon his failure to surrender at the time and place prescribed.

[30 FR 4411, Apr. 6, 1965]

§ 237.3 Cost of maintenance not assessed.

A claim pursuant to section 237(a)(2)(B) of the Act shall be established to the satisfaction of the district director in charge of the port of arrival, from whose adverse decision no appeal shall lie. The district director shall afford the line a reasonable time within which to submit affidavits and briefs to support its claim.

[23 FR 5818, Aug. 1, 1958. Redesignated at 26 FR 2113, Mar. 11, 1961]

§ 237.4 Imposition of penalty.

Penalties for violation of sections 233 and 237 of the act shall be imposed in accordance with the provisions of Part 280 of this chapter. A bond or undertaking submitted to obtain clearance as provided in section 237(b) of the Act shall be on Form I-310.

[23 FR 5818, Aug. 1, 1958. Redesignated at 26 FR 2113, Mar. 11, 1961]

§ 237.5 Notice to transportation line of alien's exclusion.

An excluded alien shall, immediately or as promptly as the circumstances permit, be offered for deportation to the master, commanding officer, purser, person in charge, agent, owner, or consignee of the vessel or aircraft on which the alien is to be deported, as determined by the district director, with a written notice specifying the cause of exclusion, the class of travel in which such alien arrived and is to be deported, and with the return of any documentation which will assist in effecting his deportation. If special care and attention is required, the provisions of § 243.7 of this chapter shall apply.

[27 FR 1479, Feb. 17, 1962]

§ 237.6 Deportation.

(a) *Definitions of terms.* For the purposes of this section, the following terms mean:

(1) Adjacent island—as defined in section 101(b)(5) of the Act.

(2) Foreign contiguous territory—any country sharing a common boundary with the United States.

(3) Residence in foreign contiguous territory or adjacent island—any physical presence, regardless of intent, in a foreign contiguous territory or an adjacent island if the government of such territory or island agrees to accept the alien.

(4) Aircraft or vessel—any conveyance and other mode of travel by which arrival is effected.

(b) *Place to which deported.* Any alien (other than an alien crewmember or an alien who boarded an aircraft or vessel in foreign contiguous territory or an adjacent island) who is ordered excluded shall be deported to the country where the alien boarded the vessel or aircraft on which the alien arrived in the United States. If that country refuses to accept the alien, the alien shall be deported to:

(1) The country of which the alien is a subject, citizen, or national;

(2) The country where the alien was born;

(3) The country where the alien has a residence; or

(4) Any country willing to accept the alien.

(c) *Contiguous territory and adjacent islands.* Any alien ordered excluded who boarded an aircraft or vessel in foreign contiguous territory or in any adjacent island shall be deported to such foreign contiguous territory or adjacent island if the alien is a native, citizen, subject, or national of such foreign contiguous territory or adjacent island, or if the alien has a residence in such foreign contiguous territory or adjacent island. Otherwise, the alien shall be deported, in the first instance, to the country in which is located the port at which the alien embarked for such foreign contiguous territory or adjacent island.

(d) *Land border pedestrian arrivals.* Any alien ordered excluded who arrived at a land border on foot shall be deported in the same manner as if the alien had boarded a vessel or aircraft in foreign contiguous territory.

[47 FR 44237, Oct. 7, 1982]

PART 238—CONTRACTS WITH TRANSPORTATION LINES

Sec.

238.1 Contracts.
238.2 Transportation lines bringing aliens to the United States from or through foreign contiguous territory or adjacent islands and lines bringing aliens destined to the United States into such territory or islands.
238.3 Aliens in immediate and continuous transit.
238.4 Preinspection outside the United States.

AUTHORITY: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103. Interprets or applies sec. 238, 66 Stat. 202; 8 U.S.C. 1228, unless otherwise noted.

§ 238.1 Contracts.

The contracts with transportation lines referred to in section 238(a) of the Act shall be made by the regional commissioner in behalf of the government and shall be on Form I-421. The contracts with transportation lines referred to in section 238(b) of the Act shall be made by the regional commissioner in behalf of the government and shall be on Form I-420. The contracts with transportation lines referred to in section 238(d) of the Act shall be made by the Commissioner in behalf of the government and shall be on Form I-426. The contracts with transportation lines desiring their passengers and crews preinspected at places outside the United States shall be made by the Commissioner in behalf of the government and shall be on Form I-425; except that contracts for irregularly operated charter flights may be made by the regional commissioner having jurisdiction over the location where the inspection will take place.

[45 FR 82154, Dec. 15, 1980]

§ 238.2 Transportation lines bringing aliens to the United States from or through foreign contiguous territory or adjacent islands and lines bringing aliens destined to the United States into such territory or islands.

(a) *Land-border agreements and overseas agreements.* Forms I-420 and I-421 shall be signed in duplicate and forwarded to the regional counsel. After acceptance, the district office and the signatory line shall be furnished with one copy of the agreement. The transmittal letter to the regional commissioner shall indicate whether the signatory to the agreement is a subsidiary or affiliate of a line which has already signed a similar agreement. Correspondence regarding ancillary contracts for office space and other facilities to be furnished by transportation lines at Service stations in Canada shall be similarly handled. Forms I-420 or I-421 shall not be used to cover special situations such as mechanical difficulties, accidents, severe weather conditions or other emergencies which result in nonscheduled diversions to a port in foreign contiguous territory or adjacent islands; instead the facts shall be presented to the regional commissioner in order that an appropriate agreement may be drafted. If humane considerations are involved, the Service maintains inspection facilities, and neither the alien nor the transportation line could have foreseen that application for admission to the United States would be made within 2 years, a nunc pro tunc agreement may be entered into on Form I-421 appropriately modified by adding the following paragraph:

5. That the provisions of this agreement shall be effective only to the extent that they concern ——————/ who arrived at ———— on ———— on the ————.

(b) *Agreements with transportation lines*—(1) *Canada*. Currently effective agreements on Form I-421 (Rev. 6-29-58) exist with the following transportation lines regarding arrivals in Canada pursuant to section 238(a) of the Act:

Ab Atlanttrafik Line.
Achille Lauro Armatore (Lauro Lines) (see Home Lines Agency, Inc.).
Ahrenkiel & Bene.
Air Canada.
Air France (Compagnie Nationale Air France—French National Airline).
Aktieselskabet Borgestad.
Alaska Coastal-Ellis Airlines.
Alexandria Navigation Co.
Alfred C. Toepfer Schiffahrtsgesellschaft, M.G.H.
Alfred Hold & Company.
Alitalia.
American Export Lines, Inc.
American Mail Line, Ltd.
And. Smith Rederiaktiebolag.
Arosa Line, Inc.
Baltic Steamship Co., The.
Belgian Line (Compagnie Maritime Belge).
Messrs. Bernhard Schulte.
The Booth Steamship Company, Ltd.
The Bristol City Line of Steamships, Ltd.
British Overseas Airways Corporation.
British United Airways, Ltd.
The Cairn Line of Steamships, Ltd.
Caledonian Airways (Prestwick) Ltd.
Canadian Pacific Airlines.
Canadian Pacific Steamships, Ltd.
China Merchants Steam Navigation Co., Ltd.
China Union Lines, Ltd.
Christensen Canadian African Lines.
Columbus Line.
Compagnie Maritime Belge (see Belgian Line).
Compagnie Nationale Air France (see Air France).
Corporacion Peruana de Vapores.
County Line, Ltd.
Cunard Steamship Co., Ltd.
Daido Kaiun Kaisha, Ltd. (Daido Line).
Det Dansk-Franske Dampskibsselskab.
Det Forenede Dampskibs-Selskab of Copenhagen.
Deutsche Lufthansa Aktiengesellschaft (Lufthansa German Airlines).
Ditlev-Simonsen Lines (General Steamship Corp., Ltd.).
Donaldson Line, Ltd.
East Asiatic Company, The.
Egon Oldendorff Steamship Co.
Eikland & Salamis (I. M. Skaugen Shipowners).
El Al Israel Airlines.
Elder Dempster Lines, Inc.
Ellerman & Bucknall Steamship Co., Ltd.
Ellerman's Wilson Line.
Ernst Russ Reiderl.
Europe-Canada Line.
Farmand Shipping, Inc.
Fearnley & Eger, Inc.
Federal Motorship Corp.
Fjell Line.
Fredrik Hoyer, Skein, Norway.
French Line.
Fruit Express Line.
Furness Withy & Co., Ltd. (including Furness Warren Line, Furness Red Cross Line, Furness Prince Line).
Gestioni Esevcizio Navi.
Greek Line (General Steam Navigation Company of Greece, Ltd.).
Grimaldi Siosa Lines of Canada.
Gdynia America Line, Inc.
Halcyon Lijn N.V.
Hamburg-Amerika Linie.
Hamburg-Atlantik Linie G.m.b.H. (see Home Lines Agency, Inc.).
Hamburg Chicago Line (designation of a service operated by independent signatory lines A. Kirsten, Sartori & Berger and Ahrenkiel & Bene).
Hanseatische Reederei, Emil Offen & Co.
Head Line (see Ulster Steamship Co., Ltd.).
Heimdal Steamship Co., Ltd.
Heinrich Schmidt, G.m.b.H.
Holland-America Line.
Home Lines Agency, Inc., as agents for Home Lines, Inc., National Hellenic American Line, S.A., Achille Lauro Armatore (Lauro Lines), and Hamburg-Atlantik Linie G.m.b.H.
Hugo-Stinnes Zweigniederlassung, Brennstoffeisen und Schiffahrts Gesellschaft.
Incres Steamship Co., Ltd.
Interocean Line.
Interocean Marine, Ltd.
Irish International Airlines.
Irish Shipping Ltd.
Island Navigation Co., Tokyo.
"Italia" Societa Di Navigazione (Italian Line).
Japan Air Lines Company, Ltd.
Johnson Line.
Johs. Fritzen & Sohn.
A. Kirsten.
A. F. Klaveness & Co., A/S.
Knutsen Line.
Koninklijke Luchtvaart Maatschappij N.V. (K.L.M. Royal Dutch Airlines).
Lamport & Holt Line, Ltd.
J. Lauritzen Line.

Lauro Lines (see Home Lines Agency, Inc.)
Leif Hoegh & Co. A/S.
Lord Line (see Ulster Steamship Co., Ltd.).
Lovenskiold Og Hoyers Rederi (formerly Sameiet Fossum A/S).
Lufthansa German Airlines (see Deutsche Lufthansa Aktiengesellschaft).
Lunham & Moore Shipping, Ltd.
Manchester Lines, Ltd.
Maritime Central Airways, Ltd.
Montsnip Lines. Ltd.
N. V. Maatschappij Zeevaart.
N. V. Stoomboot-Maatschappij "Hillegersberg".
National Hellenic American Line, S.A. (see Home Lines Agency, Inc.).
Netherland Line (Nederland).
Netherlands Ministry of Transport & Waterstaat Directorate-General of Shipping.
Nihonkai Kisen Kabushiki Kaisha (Pacific Ocean Line).
Nippon Yusen Kaisha (N.Y.K. Line).
Nissan Kisen Kaisha, Ltd.
Norddeutscher Lloyd (North German Lloyd).
Nordstern Reederei G.m.b.H. and C. Mackprang, Jr.
Northwest Airlines, Inc.
Norwegian American Line.
The Oceanic Steamship Co. (Matson Navigation Co.).
Oranje Line (Maatschappij Zeetransport N.V.).
Orient Steam Navigation Co. (Orient & Pacific Lines or Peninsular & Oriental Steam Navigation Co.).
Osaka Shosen Kaisha, Ltd. (Williams, Dimond & Co., authorized Agents).
Ove Skou.
Pacific Islands Transport Line.
Pacific Shipowners, Ltd.
Pacific Western Airlines.
Pan American World Airways System.
Pehrson & Wessel.
Port Line, Ltd.
Poseidon Lines.
Qantas Empire Airways, Ltd.
Rederiaktiebolaget Ragne.
Rodney Steamship Co., Ltd.
Royal Air Force Transport Command of the British Air Ministry.
Royal Mail Lines, Ltd.
Royal Rotterdam Lloyd (Lloydmail).
Sabena Belgian World Airlines.
Sameiet Fossum A/S (Now Lovenskiold Og Hoyers Rederi).
San Juan Airlines, Inc.
Sartori & Berger.
Scandinavian Airlines System, Inc.
Schulte & Bruns.
Schinnihon Steamship Co., Ltd.
States Steamship Co.
Stoomvaart M. C. Oostzee, Directors: Vinke & Co.
Swedish American Line.
Swiss Air Transport Co., Ltd., Swissair.
Swiss (Suisse) Atlantic S.A.
Taiwan Navigation Company Ltd.
Transmaris, Ltd.
Ulster Steamship Co., Ltd., The (Head Line and Lord Line).
Union Steam Ship Co. of New Zealand, Ltd.
United States Lines.
USSR-Aeroflot, The Ministry of Civil Aviation of the.
H. Vogemann.
Wallenius Line.
Watts, Watts & Co., Ltd.
Westfal-Larsen Line.
Wrangell, H. M., & Co.
YNGVAR HVISTENDAHL (Scandia Shipping Agencies, Ltd.).
Zim-Israel America Lines.
Zim-Israel Navigation Co., Ltd.

(2) *Bermuda.* Currently effective agreements on Form I-421 (Rev. 6-29-58) exist with the following transportation lines regarding arrivals in Bermuda pursuant to section 238(a) of the Act:

American Airlines, Inc.
British Overseas Airways Corp.
Guest Aerovias Mexico, S.A.
Iberia Airlines.
Linea Aeropostal Venezolana.
P & O Lines (North America) Inc.

(3) *Nassau.* Currently effective agreements on Form I-421 (Rev. 6-29-58) exist with the following transportation lines regarding arrivals in Nassau pursuant to section 238(a) of the Act:

British Overseas Airway Corporation
International Air Bahama.

[32 FR 9629, July 4, 1967, as amended at 32 FR 13755, Oct. 3, 1967; 33 FR 5255, Apr. 2, 1968; 33 FR 7485, May 21, 1968; 33 FR 10504, July 24, 1968; 33 FR 17136, Nov. 19, 1968; 34 FR 1008, Jan. 23 1969; 35 FR 7638, May 16, 1970; 36 FR 8294, May 4, 1971; 37 FR 3745, Feb. 19, 1972; 40 FR 50702, Oct. 31, 1975; 48 FR 14594, Apr. 5, 1983]

§ 238.3 Aliens in immediate and continuous transit.

(a) *Form I-426 agreements.* A transportation line bringing aliens to the United States pursuant to § 212.1(e)(1) of this chapter shall enter into an agreement on Form I-426. Such agreements shall be negotiated directly by the Central Office and the head offices of the transportation lines.

(b) *Signatory lines.* Currently effective agreements on Form I-426 exist with the following:

Achille Lauro—Armatore, Naples, Italy.
Aerlinte Eireann Teoranta (Irish Air Lines).
Aero Coach Aviation International, Inc.
Aeroflot-Soviet Airlines.
Aerolineas Argentinas.
Aerolineas INI and CIA S.A.
Aerolineas Nicaraguenses, S.A. (Aeronica).
Aerolineas Peruanas, S.A.
Aeronaves de Mexico, S.A.
AeroPeru (see Empresa de Transporte Aereo del Peru).
Aerovias Condor de Colombia Ltda.
Aerovias Interamericanas de Panama, S.A. (Aerovias Panama Airways).
Aerovias Nacionales de Colombia (AVIANCA).
Aerovias Quis-queyana.
Aerovias Venezolanas, S.A. (AVENSA).
Air Afrique.
Air B.V.I. Ltd.
Air Canada.
Air Club International Inc.
Air Florida
Air-India International Corp.
Air Jamaica (1968) Ltd.
Air Manila, Inc.
Air Micronesia, Inc.
Air Nauru.
Air New Zealand, Ltd.
Air One, Inc.
Air Pacific, Inc.
Air Pacific, Ltd.
Air Panama Internacional.
Air Siam Air Company, Ltd.
Air Specialties Corp. d.b.a. Total Air.
Air Tungaru Corp.
Air West, Inc.
Alaska Airlines, Inc.
"ALCIONE", Soc. di Navigazione p. A., Palermo.
Alfred C. Toepfer Schiffahrtsgesellschaft M.B.H.
ALIA—The Royal Jordanian Airline.
All Islands Air Taxi, Inc.
ALM-Dutch Antillean Airlines.
Aloha Airlines, Inc.
American Airlines, Inc.
American Banner Lines, Inc.
American Export Lines, Inc.
American Flyers Airline Corp.
American International Airways, Inc.
American President Lines, Ltd.
American Trans Air, Inc.
AREA, Aerovias Ecuatorianas C. Ltda.
"ARETUSA", Soc. di Navigazione p. A., Palermo.
Argonaut Airways Corp.
Arista International Airlines, Inc.
Arosa Line, Inc., "Panama."
Arrow Airways, Inc.
Athina Maritime Co., Ltd.
Atlantic Freighters, Ltd.
Atlantic Gulf Airlines.
Atlantic Oil Carriers, Ltd.
Atlantic Tankers, Ltd.
Atlantis Airlines, Ltd.
AUA Austrian Airlines.
Aviacion Y Comercio, S.A. (Aviaco Airlines).
BAHAMASAIR.
Bahamas Airways, Ltd.
Balair AG.
Barber-Wilhelmsen Line, F.M.C. No. 7489 (Barber Steamship Lines, Inc., U.S.A. General Agents).
Belize Airways, Ltd.
Blue Star Line, Inc., The.
Braniff Airways, Inc.
Brazalian International Airlines (Real-Aerovias Brazil, S.A.).
Britannia Airways Limited.
British Airways (British Airways Board).
British Caledonian Airways Limited
British Car Carriers, Ltd., and Nerdrum Lines.
British Midland Airways, Ltd.
British West Indian Airways, Ltd.
Brodin Line.
BWIA International.
Canadian National Railway Co.
Canadian Pacific Air Lines, Ltd.
Canadian Pacific Railway Co.
Capitol Airways, Inc.
Caribbean Atlantic Airlines, Inc.
Caribbean Express, Inc.
Caribbean International Airways, Ltd.
Cayman Airways, Ltd.
Ceskoslovenske Aerolinie (Czechoslovak Airlines) Chandris America Lines Inc., as general agents for: Okeania S.A. (Australis), Chandris America Lines S.A. (Amerikanis), Australian Line S.A. (Ellinis), and Themistocles Nav. S.A. (Queen Frederica).
Challenge International Airlines.
Chandris (USA) Inc., as agents for Chandris Lines.
Chandris (USA) Inc., as agents for Mariblanca Navegacion S.A. and Compania Panamena Europea Navegacion Ltda. S.A.
China Airlines, Ltd.
China Merchants Steam Navigation Co., Ltd.
China Navigation Co. Ltd., The
China Union Lines, Ltd.
Compagnia Genovese di Armemento
Compagnie Generale Transatlantique (French Line).
Compagnie Nationale Air France.
Companhia Colonial de Navegacao.
Compania Cubana de Aviacion, S.A.
Compania Dominicana de Aviacion, C. por A.
Compania Mexicana de Aviacion, S.A. (CMA).
Companhia Nacional de Navegacao, S.A.R.L.
Compania Nacional de Turismo Aereo Limitada.
Compania Transatlantica Espanola, S.A.
Condor Flugdienst GmbH.
Continental Air Lines, Inc.
Continental/Air Micronesia.
Cunard Steamship Company, Ltd.
Daido Kaiun Kaisha, Ltd., (Daido Line).
Daiwa Navigation Co., Ltd., The.

Dan-Air Services, Ltd.
Delaware and Hudson Railroad Corp.
Delta Air Lines, Inc.
A. Demades & Owners—SS AXIOS
Den Norske Amerikalinje A/S (See Norwegian America Line).
Ditlev-Simonsen Lines.
Dominion Far East Line (Hong Kong) Ltd.
Dominion Navigation Co., Ltd.
Donaldson International Airways.
Dorado Wings.
East African Airways.
Eastern Airlines, Inc.
Egyptair.
El Al Israel Airlines.
"ELIOS", Soc. di Navigazione p. A., Palermo.
Ellerman's Wilson Line, Ltd.
Empresa Ecuatoriana de Aviacion.
Empresa de Transporte Aereo del Pero (Aero-Peru).
S.A. Empresa de Viacao Aerea Rio Grandense (Varig Airlines).
Empresa Guatemalteca de Aviacion.
Epirotiki Lines, Inc.
"Erice", Soc. di Navigazione p.A., Palermo.
Eugenie Maritime Co., Ltd.
Europe-Canada Line.
Evergreen International Airlines, Inc.
Executive Air Charter.
EXPRINTER (SUCRS, S.A.).
Facilities Management Corp.
Faucett Peruvian Airlines
Fern-Ville Lines.
Fiesta Cruise Lines, Inc.
Finnair Oy.
Five Star Airlines.
Flugfelag Islands, H.F. (Iceland Airways).
Flying Tiger Line Inc., The
Furness-Withy and Co., Ltd.
General Airways, Inc.
General Steam Navigation Co., Ltd., of Greece—Greek Line.
German Atlantic Line (North German Lloyd Passenger Agency, Inc., for).
Giacomo Costa fu Andrea (Linea "C"), Genoa.
Global Chartering & Brokerage Co., Inc.
Globe Air Ltd. Basel, Switzerland.
Great Eastern Line.
Gray Coach Lines, Ltd.
Grey Goose Bus Lines, Ltd.
Greyhound Lines-East, Division of Greyhound Lines, Inc.
Grimaldi Siosa Lines Joint Service.
Guest Aerovias Mexico, S.A.
Guy-America Airways, Inc.
Guyana Airways Corp.
Haiti Air.
Hamburg American Line.
Hapag/Lloyd A.G./North German Lloyd Passenger Agency, Inc.
Harbor Airlines, Inc.
Hawaiian Airlines.
Holland-America Line.
Home Lines Agency Inc., as agent for Home Lines Inc.
Horn-Linie.
Hugo Stinnes Transozean Schiffahrts, gmbh, Mulheim-Ruhr, Germany.
Iberia Air Lines of Spain.
Iberia Lineas Aereas Espansolas.
Icelandic Airlines, Inc. (Loftleidir, H.F.).
Iiho Kaium Kaisha, Ltd.
Indo-China Steam Navigation Co., Ltd., The.
Inexadria Airways.
Intercontinental, U.S., Inc.
International Aircraft Services, Inc.
International Airlines, Inc.
Interocean Airways, S.A., Luxembourg.
Iran National Airlines Corporation.
Island Aviation Incorporated.
Italian Line, "Italia" Societa per Azioni di Navigazione, Genoa.
Jadrolinija Steamship Co.
Japan Airlines.
Japan Airlines Co., Inc.
Jat-Yugoslav Airlines.
Jugoslavenska Linijska Plovidba and/or Jugolinija.
Kambara Kisen Co. Ltd.
Kawasaki Kisen Kaisha, Ltd.
Klaveness Line.
Koninklijke Luchtvaart Maatschappij N. V. (K.L.M. Royal Dutch Airlines).
Korea Shipping Corp., Ltd., Seoul, Korea.
Korean Air Lines Co., Ltd.
Kulukundis Shipping Agency, Inc.
Kuwait Airways Corporation.
Laeisz, F., Hamburg, Germany.
Laker Airways Limited.
LAP-Lineas Aereas Paraguayas.
Lauretizen, J.
Leeward Islands Air Transport Services (LIAT).
Linea Aerea del Cobre, S.A. "LADECO".
Linea Aerea Nacional, Chile.
Linea Aeropostal Venezolana (LAV).
Lineas Aereas Costarricenses, S.A. (LACSA).
Lineas Aereas de Nicaragua, S.A.
Lineas Aereas Taxader S.A.
Linee Aeree Italiane (ALITALIA).
Livanos Maritime Co., Ltd.
Lloyd Aero Boliviano S.A.
Lloyd International Airways, Ltd.
Lot-Polish Airlines.
LTU Lufttransport Unternehmen KG.
Lufthansa German Airlines (Deutsche Lufthansa Aktiengesellschaft).
Mackey Airlines, Inc.
Mall Airways, Inc.
Marchessini Lines.
Marine Mercante Nicaraguense, S.A. (Mamenic Line).
Maritime Central Airways, Ltd.
Maritime Company of the Philippines.
Martinair Holland, N.V.
McCormick Shipping Corp.
"MEGRA" Soc. di Navigazione p.A., Palermo.
Middle East Airlines.
Mitsui Steamship Co., Ltd.

BEST COPY A

Montana Flugbetrieb.
Murray Hill Limousine Service Ltd.
N. V. Scheepvaart Maatschappij "Transocean" (Trans-Ocean Steamship Co.).
Naess Shipping Co., Inc.
National Airlines, Inc.
NATUMEX Lines—Naviera Truistica Mexicana S.A.
Nauru Pacific Line.
Naviera Aznar Sociedad Anonima.
Nederland Line.
Netherlands Ministry of Transport and Waterstaad Directorate-General of Shipping.
New Zealand Shipping Co., Ltd., Norton, Lilly & Co., Inc., General Agents.
Nigeria Airways Limited.
Nihonkai Kisen Kaisha.
Nippon Yusen Kaisha (N.Y.K. Line).
Nordair Ltd.
North Central Airlines Inc.
Northeast Airlines, Inc.
North German Lloyd Passenger Agency, Inc. (see Hapag/Lloyd A.G./North German Lloyd Passenger Agency, Inc.)
Northwest Airlines, Inc.
Norwegian America Line (Den Norske Amerikalinje A/S).
Norwegian Caribbean Lines.
Ocean Cargo Line, Ltd.
Ocean Tanker Line, Ltd. (Lavino Shipping Co., Philadelphia, Agents).
Ocean Tankers, Ltd.
Oceanic Steamship Co., The
Olsen Line, Fred (Fred Olsen & Co.).
Olympic Airways, S.A.
Ontario Central Airlines, Ltd.
Orient Overseas Line.
Orient Steam Navigation Co., Ltd.
Osaka Shosen Kaisha, Ltd.
Overseas National Airways.
Ozean/Stinnes Linien.
Pacific Australian Direct Line.
Pacific Far East Line, Inc.
Pacific Islands Transport Line A/S THORDAHL.
Pacific Micronesian Line, Inc.
Pacific Ocean Line.
Pacific Shipowners, Ltd., Suva, Fiji.
Pacific Steam Navigation Co.
Pacific Western Airlines, Ltd.
Pakistan International Airlines Corp.
Pan American World Airways, Inc.
Panoceanic Tanker Line, Ltd.
Peninsular & Occidental Steamship Co.
Peninsular & Oriental Steam Navigation Co.
Penn Central Co., The
Phillippine Air Lines.
Piedmont Aviation, Inc.
Pilgrim Aviation & Airlines, Inc., (d/b/a Pilgrim Airlines).
"POLINNIA" Soc. di Navigazione p.A., Palermo.
Pomair N.V.
President Airlines, Inc.
P.R. Express.
Pro Air Services.
Provo Air, Inc.
Puerto Rico International Airlines, Inc.
Qantas Empire Airways, Ltd.
REAL S/A—Transportes Aereos.
Red Carpet Airlines, Inc.
Rederiaktiebolaget Nordstjernan (Johnson Line), Stockholm.
Republic Airlines, Inc.
Rich International Airways, Inc.
Riddle Airlines, Inc.
Royal Air Maroc.
Royal Mail Lines, Ltd.
Royal Netherlands Steamship Co.
Royal Rotterdam Lloyd.
Sabena Belgian Air Lines.
Sahsa Honduras Airlines.
Samoa Airlines.
Saturn Airways, Inc.
Saudi Arabian Airlines.
Scandinavian Airlines System, Inc.
Scindia Steam Navigation Co., Ltd.
Seven Seas Airlines, Inc.
Shawnee Airlines, Inc.
Shinwa Kaiun Kaisha, Ltd.
Showa Shipping Co., Ltd.
Sicula Oceanica, S.A. (SIOSA Lines).
Singapore Airlines.
Skystar International, Inc.
Societa Italiana di Armamento "SIDARMA".
Societa Italiana Transporti Marittimi of Genoa (Sitmar Line).
South African Airways.
South Pacific Air Lines.
Southern Airways, Inc.
Southern Air Transport, Inc.
Spantax S.A.
Standard Airway, Inc.
States Steamship Co.
Sterling Airways A/S.
SUEDFLUG, Sued-deutsche Fluggesellscharft mbH, Stuttgart.
SUN LAND Air Lines, Inc.
Surinam Airways Ltd.
Swedish American Line.
Swiss Air Transport Co., Ltd. (SWISSAIR).
TACA International Airlines, S.A.
Taiwan Navigation Co., Ltd.
Texas International Airlines, Inc.
Thai Airways International, Ltd.
The Eastern & Australian Steamship Co., Ltd.
Theofano Maritime Co., Ltd.
Tower Air, Inc.
Toyo Yusen Co., Ltd.
Transair Limited-Winnipeg, Manitoba.
Transamerica Airlines.
Transatlantic Steamship Co., Ltd. (Rederiaktiebolaget Transatlantic).
Trans Caribbean Airways, Inc.
Transavia Holland N.V.
Transcontinental S.A. de Transportes C.El.
Transglobe Airways, Ltd.
Trans Meridian Flying Services, Ltd.
Trans Micronesian Airways.
Transocean Airlines.

Transportation Corp. of America (Trans Caribbean Airways).
Transportes Aeros Nacionales, S.A. (TAN Airlines).
Transportes Aereos Portugueses S.A.R.L.
Trans World Airlines, Inc.
Trent Maritime Co., Ltd.
Triton Shipping, Inc.
Twentieth Century Airlines.
Union de Transports Aeriens—U.T.A.
United Air Lines, Inc.
United Philippine Line.
United States Lines, Inc.
United States Overseas Airlines, Inc.
United White Shipping Co., Ltd.
Universal Airlines, Inc.
U.S. Air, Inc.
Varig S.A. (Brasilian Airlines).
Venezuelan International Airlines, Inc.
VIA Rail Canada Inc.
Wardair Canada Inc.
Western Airlines.
Westfal Larsen Line.
White Star Maritime Co., Ltd.
Wien Consolidated Airlines, Inc.
Winchester, J. H., & Co., as agents for Costa Line.
Windward Islands Airways International.
World Airways, Inc.
Wamashita Steamship Co., Ltd.
Ybarra & Co., Inc.
Zim Israel Navigation Co., Ltd.

(Secs. 103, 66 Stat. 173 (8 U.S.C. 1103); 238(d), 66 Stat. 202 (8 U.S.C. 1228(d)))

[32 FR 9630, July 4, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 238.3, see List of CFR Sections Affected in the Finding Aids section of this volume.

§ 238.4 Preinspection outside the United States.

The following transportation lines have entered into agreements on Form I-425 for the preinspection of their passengers and crews at places outside the United States:

AT BERMUDA

Air Florida, Inc.
Air Venturers of Houston, Inc.
American Airlines, Inc. (Charter Flights only).
American Eagle Airlines, Inc.
American Flyers Airline Corp.
Braniff Airways, Inc.
British Airways (British Airways Board).
Capitol Airways, Inc.
Delta Air Lines, Inc.
Eastern Air Lines, Inc.
Flying Tiger Line Inc., The.
Furness, Withy and Co., Ltd.
Guest Aerovias Mexico, S.A.
Northeast Airlines, Inc.
Northeastern International Airways, Inc.
Pan American World Airways, Inc.
Saturn Airways.
Standard Air Ways, Inc.
Swedish American Line Agency, Inc.
Trans International Airlines.
Trans World Airlines, Inc.
United Air Lines.
World Airways, Inc.

AT CALGARY

Air Canada
America West Airlines, Inc.
American Airlines, Inc.
Big Sky Airlines.
Cascade Airways, Inc.
Northwest Airlines, Inc.
Pacific Western Airlines, Ltd.
Wardair Canada, Inc.
Western Airlines Inc.

AT EDMONTON

Air Canada.
Canadian Pacific Airlines.
Continental Airlines.
Northwest Airlines, Inc.
Pacific Western Airlines.
Republic Airlines.
Wardair Canada, Inc.
Western Air Lines, Inc.

AT FREEPORT

Aerostar Airlines, Inc.
Air Florida, Inc.
Bahamas Air Holdings Ltd.
Caribbean Express, Inc.
Delta Air Lines Inc.
Eastern Air Lines Inc.
Evergreen International Airlines, Inc.
Gull Air, Inc.
Mackey International Airlines.
Northeastern International Airways, Inc.
Pan American World Airways, Inc.
Rich International Airways, Inc.
U.S. Air, Inc.
United Airlines, Inc.

AT MONTREAL

Air Canada.
Air Florida, Inc.
Air France.
Air Ontario, Limited.
American Airlines, Inc.
American Flyers Airline Corp.
Braniff Airways, Inc.
British Airways (British Airways Board).
Canadian Pacific Airlines, Ltd.
Capitol Airways, Inc.
Delta Air Lines, Inc.
Deutsche Lufthansa Aktiengesellschaft (Lufthansa German Airlines).
Eagle Airways (Bermuda) Ltd.
Eastern Air Lines, Inc.
Eastern Provincial Airways (1963) Limited.
McCulloch International Airlines.

Nordair Ltee—Nordair Ltd.
Northeast Airlines, Inc.
Ozark Air Lines, Inc.
Pilgrim Aviation and Airlines, Inc.
Pan American World Airways, Inc.
Quebecair.
Republic Airlines, Inc.
Saturn Airways, Inc.
Trans-Florida Airlines, Inc.
Trans World Airlines, Inc.
Transair Limited.
United Air Lines, Inc.
U.S. Air, Inc.
Wardair Canada, Inc.
Western Skyways, Inc.
World Airways, Inc.
World Wide Airways, Inc.
Worldway Airlines Ltd.
Wright Air Lines Inc.

AT NASSAU

Aerostar Airlines Inc.
Air Canada.
Air Venturers of Houston, Inc.
American Flyers Airline Corp.
American International Airways.
Bahamasair Holdings Ltd.
Bahamas Airways, Ltd.
Best Airlines, Inc.
British Airways (British Airways Board).
Capitol Airways, Inc.
Delta Air Lines, Inc.
Eagle Airways (Bermuda), Ltd.
Eastern Air Lines.
Executive Jet Aviation, Inc.
Flying Tiger Line, Inc., The.
Great Lakes Airlines Limited.
International Air Bahama, Ltd.
Mackey International Airlines.
McCormick Shipping Corp., Eastern Shipping Corp. Agents.
Modern Air Transport, Inc.
National Airlines, Inc.
Northeastern International Airways, Inc.
Pan American World Airways, Inc.
Pro Air Services.
Rich International Airways, Inc.
Trans Caribbean Airways, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.
U.S. Air, Inc.
World Airways, Inc.

AT VANCOUVER

AirCal, Inc.
Air Canada.
American Airlines, Inc.
American Flyers Airline Corp.
British Airways (British Airways Board).
Canadian Pacific Air Lines, Ltd.
Continental Airlines.
Costa Cruise Line.
Great American Airways, Inc.
Great Northern Airways, Ltd.
Harbor Airlines, Inc.
Holland America Cruises.
International Jet Air, Ltd.
Monarch Cruise Lines, Inc.
Nomads, Inc.
P. & O. Inc.
P & O Lines (North America) Inc.
Pacific Interstate Airlines.
Pacific Western Airlines, Ltd.
Paquet Cruise Lines, Inc.
San Juan Airlines, Inc.
South Pacific Island Airways.
Standard Airways, Inc.
Sundance Cruises, Inc.
Trans World Airlines, Inc.
United Air Lines, Inc.
Universal Airlines, Inc.
VCHC Enterprises, Limited.
Wardair Canada, Inc.
Western Airlines, Inc.
World Airways, Inc.

AT VICTORIA

Airwest Canada
Black Ball Transport, Inc.
British Columbia Coast Steamship Service.
British Columbia Steamship Co. (1975), Ltd.
Canadian Pacific Railway Co.
Island Jetfoil Corporation.
Northwest Hydrofoil Lines, Inc.
Washington State Ferries.
Yarmouth Cruises, Inc.

AT TORONTO

Air Canada.
Air Florida, Inc.
Air France.
Air Ontario, Limited.
American Airlines, Inc.
American Flyers Airline Corp.
Braniff Airways, Inc.
British United Airways (Services), Ltd.
British West Indian Airways.
Caledonian Airways (Prestwick), Ltd.
Canadian Pacific Air Lines, Ltd.
Capitol Airways, Inc.
Dan-Air Services, Ltd.
Eastern Air Lines, Inc.
Eastern Provincial Airways (1963) Limited.
McCulloch International Airlines.
Nordair Ltee—Nordair Ltd.
North Central Airlines, Inc.
Ozark Air Lines, Inc.
Pan American World Airways, Inc.
Pilgrim Aviation and Airlines, Inc.
Quebecair.
Saturn Airways, Inc.
Standard Airways, Inc.
Trans World Airlines, Inc.
Transair Limited.
United Air Lines, Inc.
U.S. Air, Inc.
Wardair Canada, Inc.
Wright Air Lines.
World Airways, Inc.
Worldways Canada Limited.
Yugoslav Airlines.

AT WINNIPEG

Aero Trades (Western) Ltd.
Air Canada.
CP Air.
Frontier Airlines, Inc.
Holiday Air of America.
Nordair Limited.
North Central Airlines.
Northwest Airlines, Inc.
Pacific Western Airlines, Ltd.
Trans Air, Ltd.
Trans World Airlines, Inc.
VCHC Enterprises, Limited.
Wardair Canada, Inc.

AT PRINCE RUPERT

State of Alaska Department of Public Works. Westours, Inc.

(Secs. 103 and 238(b); (8 U.S.C. 1103 and 1228(b)))

[32 FR 9630, July 4, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 238.4, see List of CFR Sections Affected in the Finding Aids section of this volume.

PART 239—SPECIAL PROVISIONS RELATING TO AIRCRAFT: DESIGNATION OF PORTS OF ENTRY FOR ALIENS ARRIVING BY CIVIL AIRCRAFT

Sec.
239.1 Definitions.
239.2 Landing requirements.
239.3 Aircraft; how considered.
239.4 International airports for entry of aliens.

AUTHORITY: Secs. 103, 231, 239, 66 Stat. 173, 195, 203; 8 U.S.C. 1103, 1221, 1229.

§ 239.1 Definitions.

(a) *Scheduled Airline.* This term means any individual, partnership, corporation, or association engaged in air transportation upon regular schedules to, over, or away from the United States, or from one place to another in the United States, and holding a Foreign Air Carrier permit or a Certificate of Public Convenience and Necessity issued pursuant to the Federal Aviation Act of 1958 (72 Stat. 731).

(b) *International Airport.* An international airport is one designated by the Commissioner for the entry of aliens with the prior approval of the Secretary of Commerce, Secretary of the Treasury and the Secretary of Health and Human Services.

(c) *Landing Rights Airport.* An airport, although not designated as international, at which permission to land has been granted to aircraft operated by scheduled airlines by the Commissioner of Customs.

[49 FR 50018, Dec. 26, 1984]

§ 239.2 Landing requirements.

(a) *Place of landing.* Aircraft carrying passengers or crew required to be inspected under the Act shall land at the international air ports of entry enumerated in Part 100 of this chapter unless permission to land elsewhere shall first be obtained from the Commissioner of Customs in the case of aircraft operated by scheduled airlines, and in all other cases from the district director of Customs or other Customs officer having jurisdiction over the Customs port of entry nearest the intended place of landing. Notwithstanding the foregoing, aircraft carrying passengers or crew required to be inspected under the Act on flights originating in Cuba shall land only at Fort Lauderdale-Hollywood Airport, Fort Lauderdale, Florida, unless advance permission to land elsewhere has been obtained from the District Director of the Immigration and Naturalization Service at Miami, Florida.

(b) *Inspection at other than international airports.* Whenever permission is granted to land at other than an international airport designated in § 100.4(c)(3) of this chapter, the owner, operator, or person in charge of the aircraft shall pay any additional overtime expenses incurred in inspecting passengers or crew on board such aircraft.

(c) *Advance notice of arrival.* Aircraft carrying passengers or crew required to be inspected under the Immigration and Nationality Act, except aircraft of a scheduled airline arriving in accordance with the regular schedule filed with the Service at the place of landing, shall furnish notice of the intended flight to the immigration officer at or nearest the intended place of landing, or shall furnish similar notice to the district director of Customs or other Customs officer in charge at such place. Such notice shall specify the type of aircraft, the registration marks thereon, the name of the aircraft commander, the place of last departure, the airport of entry, or other place at which landing has been authorized, number of alien passengers, number of citizen passengers, and the estimated time of arrival. The notice shall be sent in sufficient time to enable the officers designated to inspect the aircraft to reach the airport of entry or such other place of landing prior to the arrival of the aircraft.

(d) *Permission to discharge or depart.* Aircraft carrying passengers or crew required to be inspected under the Immigration and Nationality Act shall not discharge or permit to depart any passenger or crewman without permission from an immigration officer.

(e) *Emergency or forced landing.* Should any aircraft carrying passengers or crew required to be inspected under the Immigration and Nationality Act make a forced landing in the United States, the commanding officer or person in command shall not allow any passenger or crewman thereon to depart from the landing place without permission of an immigration officer, unless such departure is necessary for purposes of safety or the preservation of life or property. As soon as practicable, the commanding officer or person in command, or the owner of the aircraft, shall communicate with the nearest immigration officer and make a full report of the circumstances of the flight and of the emergency or forced landing.

[22 FR 9795, Dec. 6, 1957, as amended at 32 FR 9631, July 4, 1967; 45 FR 29243, May 1, 1980; 49 FR 50019, Dec. 26, 1984]

§ 239.3 Aircraft; how considered.

Except as otherwise specifically provided in the Immigration and Nationality Act and this chapter, aircraft arriving in or departing from the continental United States or Alaska directly from or to foreign contiguous territory or the French island of St. Pierre or Miquelon shall be regarded for the purposes of the Immigration and Nationality Act and this chapter as other transportation lines or companies arriving or departing over the land borders of the United States. Aliens on aircraft arriving overland in foreign contiguous territory on journeys which did not begin outside of North or South America or islands belonging to countries or to political subdivisions of these continents shall not be held to be subject to section 212(a)(24) of the Immigration and Nationality Act.

[22 FR 9795, Dec. 6, 1957]

§ 239.4 International airports for entry of aliens.

International airports for the entry of aliens shall be those airports designated as such by the Commissioner. An application for designation of an airport as an international airport for the entry of aliens shall be made to the Commissioner and shall state whether the airport: (a) Has been approved by the Secretary of Commerce as a properly equipped airport, (b) has been designated by the Secretary of the Treasury as a port of entry for aircraft arriving in the United States from any place outside thereof and for the merchandise carried thereon, and (c) has been designated by the Secretary of Health, Education, and Welfare as a place for quarantine inspection. An airport shall not be so designated by the Commissioner without such prior approval and designation, and unless it appears to the satisfaction of the Commissioner that conditions render such designation necessary or advisable, and unless adequate facilities have been or will be provided at such airport without cost to the Federal Government for the proper inspection and disposition of aliens, including office space and such temporary detention quarters as may be found necessary. The designation of an airport as an international airport for the entry of aliens may be withdrawn whenever, in the judgment of the Commissioner, there appears just cause for such action.

[22 FR 9795, Dec. 6, 1957]

PART 241—JUDICIAL RECOMMENDATIONS AGAINST DEPORTATION

AUTHORITY: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103.

§ 241.1 Notice; recommendation.

For the purposes of clause 2 of section 241(b) of the Act, notice to the district director having administrative jurisdiction over the place in which the court imposing sentence is located shall be regarded as notice to the Service. The notice shall be transmitted to the district director by the court, a court official, or by counsel for the prosecution or the defense, at least 5 days prior to the court hearing on whether a recommendation against deportation shall be made. If less than 5 days' notice is received and sufficient time remains to prepare proper representations, due notice shall be regarded as having been made. When less than 5 days' notice is received and sufficient time is not available to prepare proper representations, but the 30-day statutory period will expire before proper representations can be prepared, an objection shall be interposed to the recommendation against deportation on the ground that due notice was not received. If the notice is received after the running of the 30-day statutory period, it shall be regarded as an invalid notice and whatever Service proceedings are warranted shall be instituted irrespective of the recommendation against deportation. The district director, or an official acting for him, in presenting representations to the court, shall advise the court the effect a favorable recommendation would have upon the alien's present and prospective deportability. A recommendation against deportation by the sentencing court made to the district director receiving the notice shall be regarded as made to the Attorney General.

[32 FR 11517, Aug. 10, 1967]

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

Sec.

242.1 Order to show cause and notice of hearing.
242.2 Apprehension, custody, and detention.
242.3 Confined aliens, incompetents, and minors.
242.4 Fingerprints and photographs.
242.5 Voluntary departure prior to commencement of hearing.
242.7 Cancellation proceedings.
242.7a Waiver of documents; returning residents.
242.8 Immigration judges.
242.9 Trial attorney.
242.10 Representation by counsel.
242.11 Incompetent respondents.
242.12 Interpreter.
242.13 Postponement and adjournment of hearing.
242.14 Evidence.
242.15 Contents of record.
242.16 Hearing.
242.17 Ancillary matters, applications.
242.18 Decision of special inquiry officer.
242.19 Notice of decision.
242.20 Finality of order.
242.21 Appeals.
242.22 Reopening or reconsideration.
242.23 Proceedings under section 242(f) of the Act.

AUTHORITY: Secs. 103, 242, 244, 292, 66 Stat. 173, 208, as amended, 214, 235; 8 U.S.C. 1103, 1252, 1254, 1362, unless otherwise noted.

§ 242.1 Order to show cause and notice of hearing.

(a) *Commencement.* Every proceeding to determine the deportability of an alien in the United States is commenced by the issuance and service of an order to show cause by the Service. In the proceeding the alien shall be known as the respondent. Orders to show cause may be issued by:

(1) all district directors, acting district directors, deputy district directors, assistant district directors for investigations;

(2) the chief patrol agent, deputy patrol agent, and assistant chief patrol agent at El Centro, CA; Marfa, TX; and Spokane, WA; the assistant district director for deportation at Newark, New Jersey, and San Diego, CA; the assistant district director for examinations at San Francisco, CA; and

(3) officers in charge at Agana, GU; Albany, NY; Charlotte Amalie, VI; Cincinnati, OH; Hammond, IN; Memphis, TN; Milwaukee, WI; Norfolk, VA; Oklahoma City, OK; Pittsburgh, PA;

Providence, RI; Salt Lake City, UT; St. Louis, MO; Spokane, WA.

(b) *Statement of nature of proceeding.* The order to show cause will contain a statement of the nature of the proceeding, the legal authority under which the proceeding is conducted, a concise statement of factual allegations informing the respondent of the act or conduct alleged to be in violation of the law, and a designation of the charges against the respondent and of the statutory provisions alleged to have been violated. The order will require the respondent to show cause why he should not be deported. The order will call upon the respondent to appear before an immigration judge for a hearing at a time and place which may be stated in the order or may be later specified. Respondent shall be notified of the time and place of the hearing not less than 7 days before the hearing date except that where the issuing officer, in his discretion, believes that the public interest, safety, or security so requires, he may schedule the hearing on shorter notice. The issuing officer may, in his discretion, schedule the hearing on shorter notice in any other case at the request of and for the convenience of the respondent.

(c) *Service.* Service of the order to show cause may be accomplished either by personal service or by routine service; however, when routine service is used and the respondent does not appear for hearing or acknowledge in writing that he has received the order to show cause, it shall be reserved by personal service. When personal delivery of an order to show cause is made by an immigration officer, the contents of the order to show cause shall be explained and the respondent shall be advised that any statement he makes may be used against him. He shall also be advised of his right to representation by counsel of his own choice at no expense to the Government. He shall also be advised of the availability of free legal services programs qualified under Part 292a of this chapter and organizations recognized pursuant to § 292.2 of this chapter, located in the district where his deportation hearing will be held. He shall be furnished with a list of such programs, and a copy of Form I-618, Written Notice of Appeal Rights, regardless of the manner in which the service of the order to show cause was accomplished. Service of these documents shall be noted on Form I-213.

(Secs. 103, 242 and 287; 8 U.S.C. 1103, 1252 and 1357)

[22 FR 9796, Dec. 6, 1957, as amended at 43 FR 36239, Aug. 16, 1978; 44 FR 4653, Jan. 23, 1979; 50 FR 34084, Aug. 23, 1985]

§ 242.2 Apprehension, custody, and detention.

(a) *Warrant of arrest.* At the commencement of any proceeding under this part, or at any time thereafter and up to the time the respondent becomes subject to supervision under the authority contained in section 242(d) of the Act, the respondent may be arrested and taken into custody under the authority of a warrant of arrest. However, such warrant may be issued by no one other than:

(1) A district director, acting district director, deputy district director, assistant district director for investigations;

(2) The chief patrol agent, deputy chief patrol agent, and assistant chief patrol agent at El Centro, CA; Marfa, TX; and Spokane, WA; the assistant district director for deportation at Newark, New Jersey, and San Diego, CA; the assistant district director for examinations at San Francisco, CA; or

(3) Officer in charge of an office enumerated in § 242.1(a), and then only whenever, in his/her discretion, it appears that the arrest of the respondent is necessary or desirable. If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation. When a warrant of arrest is served under this part, the contents of the order to show cause shall be explained to the respondent, the reason for the arrest and his/her right to be represented by counsel of his/her own choice at no expense to the Government. He/she shall also be advised of the availability of free legal services programs qualified under Part 292a of this chapter, located in the district where the deportation hearing will be

held. The respondent shall be furnished with a list of such programs, and a copy of Form I-618, Written Notice of Appeal Rights. Service of these documents shall be noted on Form I-213. He/she shall be advised that any statement made may be used against him/her. The respondent shall also be informed whether he/she is to be continued in custody or, if release from custody has been authorized, of the amount and conditions of the bond or the conditions under which he/she may be released. A respondent on whom a warrant of arrest has been served may apply to any officer authorized by this section to issue such a warrant for release or for amelioration of the conditions under which he/she may be released. When serving the warrant of arrest and when determining any application pertaining thereto, the officers authorized by this section to issue warrants shall furnish the respondent with a notice of decision, which may be on Form I-286, indicating whether custody will be continued or terminated, specifying the conditions, if any, under which release is permitted, and advising the respondent appropriately whether he/she may apply to an immigration judge pursuant to paragraph (b) of this section for release of modification of the conditions of release or whether he/she may appeal to the Board. A direct appeal to the Board from a determination by an officer authorized by this section to issue warrants shall not be allowed except as authorized by paragraph (b) of this section.

(b) *Authority of immigration judge; appeals.* After an initial determination pursuant to paragraph (a) of this section, and at any time before a deportation order becomes administratively final, upon application by the respondent for release from custody or for amelioration of the conditions under which he may be released, an immigration judge may exercise the authority contained in section 242 of the Act to continue or detain a respondent in, or release him from custody, and to determine whether a respondent shall be released under bond, and the amount thereof, if any. Application for the exercise of such authority may be made to any available immigration judge who is stationed at the Service office which has administrative jurisdiction over the proceeding under the order to show cause or who conducts hearings there. If no such immigration judge is available, application may be made to any available immigration judge stationed in the region wherein said Service office is located. If there is no available immigration judge in that region, the application may be made to any other immigration judge. However, if the respondent has been released from custody, such application must be made within seven days after the date of such release. Thereafter, application by a released respondent for modification of the terms of release may be made only to the district director. In connection with such application the immigration judge shall advise the respondent of his right to be represented by counsel of his own choice at no expense to the Government. He shall also be advised of the availability of free legal services programs qualified under Part 292a of this chapter and organizations recognized pursuant to § 292.2 of this chapter, located in the district where his application is to be heard. The Immigration Judge shall ascertain that the respondent has received a list of such programs, and the receipt by the respondent of a copy of Form I-618, Written Notice of Appeal Rights. Upon rendering a decision on an application under this section, the Immigration Judge (or district director if he renders the decision) shall advise the alien of his appeal rights under this section. The determination of the immigration judge in respect to custody status or bond shall be entered on Form I-342 at the time such determination is made and shall be accompanied by a memorandum by the immigration judge as to the reasons for his determination. The immigration judge shall promptly notify the respondent and the Service of such determination. Consideration under this paragraph by the immigration judge of an application or request of an alien regarding custody or bond shall be separate and apart from any deportation hearing or proceeding under this part, and shall form no part of such hearing or proceeding or of the record thereof. The determination of the immigration judge as to custody status or bond may be based upon any information which is available to the immigration judge or which is presented to him by the alien or the Service. The alien and the Service may appeal to the Board of Immigration Appeals from any such determination. After a deportation order becomes administratively final, or if recourse to the immigration judge is no longer available because of the expiration of the seven-day period aforementioned, the respondent may appeal directly to the Board from a determination by the district director, acting district director, deputy district director, assistant district director for investigations, or officer in charge of an office enumerated in § 242.1(a), except that no appeal shall be allowed when the Service notifies the alien that it is ready to execute the order of deportation and takes him into custody for that purpose. An appeal to the Board shall be taken from a determination by an immigration judge or from an appealable determination by a district director, acting district director, deputy district director, assistant district director for investigations, or officer in charge of an office enumerated in § 242.1(a) by filing a notice of appeal with the district director within five days after the date when written notification of the determination is served upon the respondent and the Service. Upon the filing of a notice of appeal, the district director shall immediately transmit to the Board all records and information pertaining to the determination from which the appeal has been taken. The filing of such an appeal shall not operate to delay compliance, during the pendency of the appeal, with the custody directive from which appeal is taken, or to stay the administrative proceedings or deportation.

(c) *Revocation.* When an alien who, having been arrested and taken into custody, has been released, such release may be revoked at any time in the discretion of the district director, acting district director, deputy district director, assistant district director for investigations, or officer in charge of an office enumerated in § 242.1(a), in which event the alien may be taken into physical custody and detained. If detained, unless a breach has occurred, any outstanding bond shall be revoked and cancelled. The provisions of paragraph (b) of this section shall govern availability to the respondent of recourse to other administrative authority for release from custody.

(d) *Supervision.* Until an alien against whom a final order of deportation has been outstanding for more than six months is deported, he shall be subject to supervision by a district director, acting district director, deputy district director, assistant district director for investigations, or officer in charge of an office enumerated in § 242.1(a), and required to comply with the provisions of section 242(d) of the Act relating to his availability for deportation.

(e) *Privilege of communication.* Every detained alien shall be notified that he may communicate with the consular or diplomatic officers of the country of his nationality in the United States. Existing treaties require immediate communication with appropriate consular or diplomatic officers whenever nationals of the following countries are detained in exclusion or expulsion proceedings, whether or not requested by the alien, and, in fact, even if the alien requests that no communication be undertaken in his behalf:

Algeria [1]
Argentina [1]
Australia [1]
Austria [1]
Belgium [1]
Bolivia [1]
Brazil [1]
Cameroon [1]
Canada [1]
Chile [1]
China, People's Rep. of [2]
China, Rep. of
Colombia [1]
Costa Rica
Cuba [1]
Czechoslovakia [1]
Cyprus
Denmark [1]
Dominican Republic [1]
Ecuador [1]
Egypt [1]
El Salvador [1]

See footnotes at end of table.

- Fiji [3]
- France [3]
- Gabon [3]
- Gambia
- Germany, Fed Rep. [3]
- Ghana
- Guatemala [3]
- Guyana [3]
- Holy See [3]
- Honduras [3]
- Hungarian People's Rep. [5]
- Iraq [3]
- Ireland [1]
- Italy [3]
- Jamaica
- Jordan [3]
- Kenya
- Kuwait
- Laos [3]
- Lesotho [3]
- Liechtenstein [3]
- Luxembourg [3]
- Madagascar [3]
- Malawi
- Malaysia
- Mali [3]
- Malta
- Mauritius [3]
- Mexico [3]
- Nepal [3]
- New Zealand [3]
- Niger [3]
- Nigeria
- Oman [3]
- Pakistan [3]
- Panama [3]
- Paraguay [3]
- Philippines
- Poland [2]
- Portugal [3]
- Romania [4]
- Rwanda [3]
- Senegal [3]
- Sierra Leone
- Singapore
- Somalia [3]
- Spain [3]
- Sweden [3]
- Switzerland [3]
- Tanzania
- Tonga [3]
- Trinidad & Tobago
- Tunisia [3]
- Uganda
- United Kingdom
  - England
  - Northern Ireland
  - Scotland
  - Southern Rhodesia
  - Wales
- Union of Soviet Socialist Rep. (USSR)
- Uruguay [3]
- Upper Volta [3]
- Venezuela [3]
- Viet-Nam, Rep. [3]
- Yugoslavia [3]
- Zambia

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[1] Unless national requests that such information not be transmitted.

[2] If national is an alien admitted to lawful permanent residence, communication will be made with Polish consulate only upon the request of such national.

[3] If national requests his government be notified, INS must notify *immediately*.

[4] Notification must be made within two days.

[5] Notification must be made within three days.

[6] Notification must be made within four days.

[28 FR 8280, Aug. 13, 1963, as amended at 39 FR 20367, June 10, 1974; 39 FR 20959, June 17, 1974; 40 FR 30470, July 21, 1975; 40 FR 50250, Oct. 29, 1975; 44 FR 4654, Jan. 23, 1979; 48 FR 31005, July 6, 1983; 50 FR 34084, Aug. 23, 1985]

§ 242.3 Confined aliens, incompetents, and minors.

(a) *Service.* If the respondent is confined, or if he is an incompetent, or a minor under the age of 14, the order to show cause, and the warrant of arrest, if issued, shall be served in the manner prescribed in § 242.1(c) upon the person or persons named in § 103.5a(c) of this chapter.

(b) *Service custody; cost of maintenance.* An alien confined because of physical or mental disability in an institution or hospital shall not be accepted into physical custody by the Service until an order of deportation has been entered and the Service is ready to deport the alien. When such an alien is an inmate of a public or private institution at the time of the commencement of the deportation proceedings, expenses for the maintenance of the alien shall not be incurred by the Government until he is taken into physical custody by the Service.

[22 FR 9796, Dec. 6, 1957, as amended at 37 FR 11470, June 8, 1972; 43 FR 48620, Oct. 19, 1978]

§ 242.4 Fingerprints and photographs.

Every alien 14 years of age or older against whom proceedings are commenced under this part shall be fingerprinted. Any such alien, regardless of his age, shall be photographed if a photograph is required by the district director, acting district director, deputy district director, or officer in charge authorized to issue an order to show cause.

[28 FR 9504, Aug. 30, 1963]

§ 242.5 Voluntary departure prior to commencement of hearing.

(a)(1) *Authorized officers.* The authority contained in section 242(b) of the act to permit aliens to depart voluntarily from the United States may be exercised by district directors, district officers who are in charge of investigations, officers in charge, and chief patrol agents.

(2) *Authorization.* Voluntary departure may be granted to any alien who is statutorily eligible: (i) Who is a native of a foreign contiguous territory and not within the purview of class (vi) of this paragraph; or (ii) whose application for extension of stay as a nonimmigrant is being denied; or (iii) who has voluntarily surrendered himself to the Service; or (iv) who presents a valid travel document and confirmed reservation for transportation out of the United States within 30 days; or (v) who is an F-1, F-2, J-1, or J-2 nonimmigrant and who has lost such status solely because of a private bill introduced in his/her behalf; or (vi) who is admissible to the United States as an immigrant and: (A) Who is an immediate relative of a U.S. citizen, or (B) is otherwise exempt from the numerical limitation on immigrant visa issuance, or (C) has a priority date for an immigrant visa not more than 60 days later than the date show in the latest Visa Office Bulletin and has applied for an immigrant visa at an American Consulate which has accepted jurisdiction over the case, or (D) who is a third-preference alien with a priority date earlier than August 9, 1978, or (E) who is the beneficiary of an approved sixth-preference petition who satisfies Examinations without another petition that he/she can qualify for third preference and who cannot obtain a visa solely because a visa number is unavailable, and who has a priority date earlier than August 9, 1978; or (vii) who has been granted asylum and has not been granted parole status or a stay of deportation; or (viii) in whose case the district director has determined there are compelling factors warranting grant of voluntary departure.

(3) *Periods of time.* Except for classes (v), (vi), (vii), and (viii) of paragraph (a)(2) of this section, any grant of voluntary departure shall contain a time limitation of usually not more than 30 days, and an extension of the original voluntary departure time shall not be authorized except under meritorious circumstances. Upon failure to depart, deportation proceedings will be pursued. Class (v) may be granted voluntary departure in increments of 1 year conditioned upon the F-1 or J-1 alien maintaining a full course of study at an approved institution of learning, or upon abiding by the terms and conditions of the exchange program within the limitations imposed by 22 CFR 514.23. Classes (vi) (A), (B), and (C) may be granted voluntary departure until the American consul is ready to issue an immigrant visa and, in the discretion of the district director, may be in increments of 30 days, conditioned upon continuing availability of an immigrant visa as shown in the latest Visa Office Bulletin and upon the alien's diligent pursuit of efforts to obtain the visa. Classes (vi) (D) and (E) may be granted voluntary departure, conditioned upon the approved third- or sixth-preference petition as appropriate, remaining valid as well as the alien's retention of the status established in the petition, for an indefinite period until an immigrant visa is available. Classes (vii) and (viii) may be granted voluntary departure in increments of time, not to exceed 1 year, as determined by the district director to be appropriate in the case. Form I-94 issued to an alien granted voluntary departure, who is within class (v), (vi), (vii), or (viii) of paragraph (a)(2) of this section may be stamped with the legend "Employment Authorized" if the alien seeks some indication from the Service that he is entitled to be employed.

(b) *Application.* Any alien who believes himself to be eligible for voluntary departure under section 242(b) of the Act may apply therefor at any office of the Service any time prior to the commencement of deportation proceedings against him or, if deportation proceedings have been commenced, any time prior to the commencement of his hearing. The officers designated in paragraph (a) of this section may deny or grant the application and determine the conditions under which the alien's departure shall be effected. An appeal shall not lie from a denial of an application for voluntary departure under this section, but the denial shall be without prejudice to the alien's right to apply for relief from deportation under any provision of law.

(c) *Revocation.* If, subsequent to the granting of an application for voluntary departure under this section, it is ascertained that the application should not have been granted, that grant may be revoked without notice by any district director, district officer in charge of investigations, officer in charge, or chief patrol agent.

[23 FR 9123, Nov. 26, 1958, as amended at 29 FR 13242, Sept. 24, 1964; 35 FR 16362, Oct. 20, 1970; 43 FR 29528, July 10, 1978; 45 FR 27917, Apr. 25, 1980; 46 FR 25598, May 8, 1981; 47 FR 49954, Nov. 4, 1982]

§ 242.7 Cancellation proceedings.

(a) *Cancellation of an order to show cause.* Any officer authorized by § 242.1(a) of this part to issue an order to show cause may cancel an order to show cause or terminate proceedings prior to the actual commencement of the hearing under a served order to show cause provided the officer is satisfied that:

(1) The respondent is a national of the United States;

(2) The respondent is not deportable under immigration laws;

(3) The respondent is deceased;

(4) The respondent is not in the United States; or

(5) The proceedings were improvidently begun.

(b) *Motion to dismiss.* After commencement of the hearing, any officer enumerated in paragraph (a) of this section may move for dismissal of the matter on the grounds set out under paragraph (a) of this section. Dismissal of the matter shall be without prejudice to the alien or the Service.

(c) *Motion for remand.* After commencement of the hearing, any officer enumerated in paragraph (a) of this section may move for remand of the matter to district jurisdiction on the ground that the foreign relations of the United States are involved and require further consideration. Remand of the matter shall be without prejudice to the alien or the Service.

(d) *Warrant of arrest.* When an order to show cause is cancelled or proceedings are terminated under this section any outstanding warrant of arrest is cancelled.

(e) *Termination of deportation proceedings by immigration judge.* An immigration judge may terminate deportation proceedings to permit the respondent to proceed to a final hearing on a pending application or petition for naturalization when the respondent has established prima facie eligibility for naturalization and the matter involves exceptionally appealing or humanitarian factors; in every other case, the deportation hearing shall be completed as promptly as possible notwithstanding the pendency of an application for naturalization during any state of the proceedings.

[47 FR 49954, Nov. 4, 1982; 47 FR 51351, Nov. 15, 1982, as amended at 50 FR 34084, Aug. 23, 1985]

§ 242.7a Waiver of documents; returning residents.

Pursuant to the authority contained in section 211(b) of the Act, an alien previously lawfully admitted to the United States for permanent residence who, upon return from a temporary absence was excludable because of failure to have or to present a valid passport, immigrant visa, reentry permit, border crossing card, or other document required at the time of entry, may be granted a waiver of such requirement in the discretion of the district director: *Provided,* That such alien (a) was not otherwise excludable at the time of entry, or (b) having been otherwise excludable at the time of entry is with respect thereto qualified for an exemption from deportability under section 241(f) of the Act, and (c) is not otherwise subject to deportation. Denial of a waiver by the district director shall not be appealable but shall be without prejudice to renewal of an application and reconsideration in proceedings before a special inquiry officer.

[29 FR 6002, May 7, 1964]

§ 242.8 Immigration judges.

(a) *Authority.* In any proceeding conducted under this part the immigration judge shall have the authority to determine deportability and to make decisions, including orders of deportation, as provided by section 242(b) of the Act; to reinstate orders of deportation as provided by section 242(f) of the Act; to determine applications under sections 208, 212(k), 241(a)(11), 241(f), 244, 245, and 249 of the Act; to determine the country to which an alien's deportation will be directed in accordance with section 243(a) of the Act; to order temporary withholding of deportation pursuant to section 243(h) of the Act; and to take any other action consistent with applicable law and regulations as may be appropriate. An immigration judge may certify his or her decision in any case to the Board of Immigration Appeals when it involves an unusually complex or novel question of law or fact. Nothing contained in this part shall be construed to diminish the authority conferred on immigration judges under section 103 of the Act.

(b) *Withdrawal and substitution of special inquiry officers.* The special inquiry officer assigned to conduct the hearing shall at any time withdraw if he deems himself disqualified. If a hearing has begun but no evidence has been adduced other than by the respondent's pleading pursuant to § 242.16(b), or if a special inquiry officer becomes unavailable to complete his duties within a reasonable time, or if at any time the respondent consents to a substitution, another special inquiry officer may be assigned to complete the case. The new special inquiry officer shall familiarize himself with the record in the case and shall state for the record that he has done so.

[22 FR 9797, Dec. 6, 1957, as amended at 47 FR 44237, Oct. 7, 1982]

§ 242.9 Trial attorney.

(a) *Authority.* When an additional immigration officer is assigned to a proceedings under this part to perform the duties of a trial attorney, he shall present on behalf of the Government evidence material to the issues of deportability and any other issues which may require disposition by the special inquiry officer. The trial attorney is authorized to appeal from a decision of the special inquiry officer pursuant to § 242.21 and to move for reopening or reconsideration pursuant to § 242.22.

(b) *Assignment.* The district director shall direct the chief legal officer to assign a general attorney to each case within the provisions of § 242.16(c) of this part, and to each case in which an unrepresented respondent is incompetent or under 16 years of age, and is not accompanied by a guardian, relative or friend. A general attorney shall be assigned to every case in which the Commissioner approves the submission of nonrecord information under § 242.17(a) of this part. In his discretion, whenever he deems such assignment necessary or advantageous, the district director may direct the chief legal officer to assign a general attorney to any other case at any stage of the proceeding.

[27 FR 9646, Sept. 29, 1962, as amended at 32 FR 9631, July 4, 1967; 46 FR 43956, Sept. 2, 1981]

§ 242.10 Representation by counsel.

The respondent may be represented at the hearing by an attorney or other representative qualified under Part 292 of this chapter.

[22 FR 9797, Dec. 6, 1957]

§ 242.11 Incompetent respondents.

When it is impracticable for the respondent to be present at the hearing because of mental incompetency, the guardian, near relative, or friend who was served with a copy of the order to show cause shall be permitted to appear on behalf of the respondent. If such a person cannot reasonably be found or fails or refuses to appear, the custodian of the respondent shall be requested to appear on behalf of the respondent.

[22 FR 9797, Dec. 6, 1957]

§ 242.12 Interpreter.

Any person acting as interpreter in a hearing under this part shall be sworn to interpret and translate accurately, unless the interpreter is an employee of the Service, in which event no such oath shall be required.

[22 FR 9797, Dec. 6, 1957]

§ 242.13 Postponement and adjournment of hearing.

Prior to the commencement of a hearing, the district director, acting district director, deputy district director, or officer in charge authorized to issue an order to show cause may grant a reasonable postponement for good cause shown, at his own instance upon notice to the respondent, or upon request of the respondent. After the commencement of the hearing, the special inquiry officer may grant a reasonable adjournment either at his own instance or, for good cause shown, upon application by the respondent or the trial attorney. A continuance of the hearing for the purpose of allowing the respondent to obtain representation shall not be granted more than once unless sufficient cause for the granting of more time is shown.

[28 FR 9504, Aug. 30, 1963]

§ 242.14 Evidence.

(a) *Sufficiency.* A determination of deportability shall not be valid unless it is found by clear, unequivocal and convincing evidence that the facts alleged as grounds for deportation are true.

(b) [Reserved]

(c) *Use of prior statements.* The special inquiry officer may receive in evidence any oral or written statement which is material and relevant to any issue in the case previously made by the respondent or any other person during any investigation, examination, hearing, or trial.

(d) *Testimony.* Testimony of witnesses appearing at the hearing shall be under oath or affirmation administered by the special inquiry officer.

(e) *Depositions.* Either at his own instance or on application of the trial attorney or the respondent, after due notice to all parties, a special inquiry officer may, if satisfied that a witness is not reasonably available at the place of hearing and that his testimony or other evidence is essential, order the taking of a deposition. Such order may prescribe and limit the content, scope, or manner of taking the deposition, may direct the production of documentary evidence, and may authorize the issuance of a subpoena by the officer designated to take the deposition in the event of the refusal or willful failure of a witness within the United States, after due notice, to appear, give testimony, or produce documentary evidence. Testimony shall be given under oath or affirmation and shall be recorded verbatim. The order of the special inquiry officer to take a deposition shall identify the witness and shall specify the title of the officer before whom the deposition is to be taken, shall set forth the immigration district having administrative jurisdiction over the place where the witness is situated but not the time, date, or place for the taking of the deposition, and shall state whether direct and cross-examination shall be by oral examination or written interrogatories or in combination. The Federal Rules of Civil Procedure shall be used as a guide to the extent practicable. In the United States, examination of the witness should take place before a special inquiry officer; abroad, preferably before a Service officer in a locality where he is authorized to interview witnesses in expulsion proceedings, elsewhere preferably before a United States consular officer. The witness shall be notified on Form I-260 to appear for examination. Copies of such notices shall be furnished to the parties to the proceeding. Both the respondent's copy and the record of hearing shall reflect advice as to his privilege to examine the witness and to be represented by counsel at such time. The officer presiding at the taking of the deposition shall note but not rule upon objections and he shall not comment on the admissibility of evidence or on the credibility and demeanor of the witness.

[22 FR 9797, Dec. 6, 1957, as amended at 32 FR 2883, Feb. 15, 1967; 40 FR 20816, May 13, 1975]

§ 242.15 Contents of record.

The hearing before the special inquiry officer, including the testimony, exhibits, applications and requests, the special inquiry officer's decision, and all written orders, motions, appeals, briefs, and other papers filed in the proceedings shall constitute the record in the case. The hearing shall be recorded verbatim except for statements made off the record with the permission of the special inquiry officer. In his discretion, the special inquiry officer may exclude from the record any arguments made in connection with motions, applications, requests, or objections, but in such event the person affected may submit a brief.

[26 FR 12112, Dec. 19, 1961]

§ 242.16 Hearing.

(a) *Opening.* The Immigration Judge shall advise the respondent of his right to representation, at no expense to the Government, by counsel of his own choice authorized to practice in the proceedings and require him to state then and there whether he desires representation; advise the respondent of the availability of free legal services programs qualified under Part 292a of this chapter and organizations recognized pursuant to § 292.2 of this chapter, located in the district where the deportation hearing is being held; ascertain that the respondent has received a list of such programs, and a copy of Form I—618, Written Notice of Appeal Rights; advise the respondent that he will have a reasonable opportunity to examine and object to the evidence against him, to present evidence in his own behalf and to cross-examine witnesses presented by the Government; place the respondent under oath; read the factual allegations and the charges in the order to show cause to the respondent and explain them in nontechnical language, and enter the order to show cause as an exhibit in the record. Deportation hearings shall be open to the public, except that the Immigration Judge may, in his discretion and for the purpose of protecting witnesses, respondents, or the public interest, direct that the general public or particular individuals shall be excluded from the hearing in any specific case. Depending upon physical facilities, reasonable limitation may be placed upon the number in attendance at any one time, with priority being given to the press over the general public.

(b) *Pleading by respondent.* The special inquiry officer shall require the respondent to plead to the order to show cause by stating whether he admits or denies the factual allegations and his deportability under the charges contained therein. If the respondent admits the factual allegations and admits his deportability under the charges and the special inquiry officer is satisfied that no issues of law or fact remain, the special inquiry officer may determine that deportability as charged has been established by the admissions of the respondent. The special inquiry officer shall not accept an admission of deportability from an unrepresented respondent who is incompetent or under age 16 and is not accompanied by a guardian, relative, or friend; nor from an officer of an institution in which a respondent is an inmate or patient. When, pursuant to this paragraph, the special inquiry officer may not accept an admission of deportability, he shall direct a hearing on the issues.

(c) *Issues of deportability.* When deportability is not determined under the provisions of paragraph (b) of this section, the special inquiry officer shall request the assignment of a trial attorney, and shall receive evidence as to any unresolved issues, except that no further evidence need be received as to any facts admitted during the pleading.

(d) *Additional charges.* A trial attorney who has been assigned to a case may at any time during a hearing lodge additional charges of deportability, including factual allegations against the respondent. The additional factual allegations and charges shall be submitted in writing and entered as an exhibit in the record. The special inquiry officer shall read the additional factual allegations and charges to the respondent and explain them to him in nontechnical language. The special inquiry officer shall advise the respondent if he is not represented by counsel that he may be so represented and also that he may have a reasonable time within which to meet the additional factual allegations and charges. The respondent shall be required to state then and there whether he desires a continuance for either of these reasons. Thereafter, the provisions of paragraph (b) of this section shall apply to the additional factual allegations and lodged charges.

[27 FR 9646, Sept. 29, 1962, as amended at 29 FR 13243, Sept. 24, 1964; 32 FR 9632, July 4, 1967; 44 FR 4654, Jan. 23, 1979]

§ 242.17 Ancillary matters, applications.

(a) *Creation of the status of an alien lawfully admitted for permanent residence.* The respondent may apply to the special inquiry officer for suspension of deportation under section 244(a) of the Act, for adjustment of status under section 245 of the Act, or under section 1 of the Act of November 2, 1966, or under section 101 or 104 of the Act of October 28, 1977, or for creation of a record of lawful admission for permanent residence under section 214(d) or 249 of the Act; such application shall be subject to the requirements contained in Parts 244, 245, and 249 of this chapter. In conjunction with such applications, if the respondent is inadmissible under any provision of section 212(a) of the Act and believes he meets the eligibility requirements for a waiver of the ground of inadmissibility, he may apply to the special inquiry officer for such waiver. The special inquiry officer shall inform the respondent of his apparent eligibility to apply for any of the benefits enumerated in this paragraph and shall afford him an opportunity to make application therefor during the hearing. In exercising discretionary power when considering an application under this paragraph, the special inquiry officer may consider and base his decision on information not contained in the record and not made available for inspection by the respondent, provided the Commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security. Whenever he believes he can do so consistently with safeguarding both the information and its source, the special inquiry officer should inform the respondent of the general nature of the information in order that the respondent may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

(b) *Voluntary departure.* The respondent may apply to the special inquiry officer for voluntary departure in lieu of deportation pursuant to section 244(e) of the Act and Part 244 of this chapter.

(c) *Temporary withholding of deportation.* The special inquiry officer shall notify the respondent that if he is finally ordered deported his deportation will in the first instance be directed pursuant to section 243(a) of the Act to the country designated by him and shall afford the respondent an opportunity then and there to make such designation. The special inquiry officer shall then specify and state for the record the country, or countries in the alternate, to which respondent's deportation will be directed pursuant to section 243(a) of the Act if the country of his designation will not accept him into its territory, or fails to furnish timely notice of acceptance, or the respondent declines to designate a country. The respondent shall be advised that pursuant to section 243(h) of the Act he may apply for temporary withholding of deporation to the country or countries specified by the special inquiry officer and may be granted not more than ten days in which to submit his application. The application shall consist of respondent's statement setting forth the reasons in support of his request. The respondent shall be examined under oath on his application and may present such pertinent evidence or information as he has readily available. The respondent has the burden of satisfying the special inquiry officer that he would be subject to persecution on account of race, religion, or political opinion as claimed. The trial attorney may also present evidence or information for the record, and he may submit information not of record to be considered by the special inquiry officer provided that the special inquiry officer or the Board has determined that such information is relevant and is classified under Executive Order No. 12356 (47 FR 14874; April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security. When the special inquiry officer receives such non-record information he shall inform the respondent thereof and shall also inform him whether it concerns conditions generally in a specified country or the respondent himself. Whenever he believes he can do so consistently with safeguarding both the information and its source, the special inquiry officer should state more specifically the general nature of the information in order that the respondent may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that such information is material to the decision.

(d) *Application for relief under section 241(f).* The respondent may apply to the immigration judge for relief from deportation under section 241(f) of the Act.

(e) *General.* An application under this section shall be made only during the hearing and shall not be held to constitute a concession of alienage or deportability in any case in which the respondent does not admit his alienage or deportability. The respondent shall have the burden of establishing that he is eligible for any requested benefit or privilege and that it should be granted in the exercise of discretion. The respondent shall not be required to pay a fee on more than one application within paragraphs (a) and (c) of this section, provided that the minimum fee imposed when more than one application is made shall be determined by the cost of the application with the highest fee. Nothing contained herein is intended to foreclose the respondent from applying for any benefit or privilege which he believes himself eligible to receive in proceedings under this part.

(Title I of Pub. L. 95-145 enacted Oct. 28, 1977 (91 Stat. 1223), sec. 103 of the Immigration and Nationality Act (8 U.S.C. 1103). Interpret or apply secs. 101, 212, 242 and 245 (8 U.S.C. 1101, 1182, 1252 and 1255); secs. 103, 208, 242 of the Immigration and Nationality Act, as amended (8 U.S.C. 1103, 1158, 1252), secs. 103, 214, 242 of the Immigration and Nationality Act; 8 U.S.C. 1103, 1184, 1252; E.O. 12356)

[26 FR 12112, Dec. 19, 1961, as amended at 34 FR 13921, Aug. 30, 1969; 39 FR 25642, July 12, 1974; 39 FR 43055, Dec. 10, 1974; 43 FR 18644, May 2, 1978; 45 FR 41393, June 19, 1980; 47 FR 12133, Mar. 22, 1982; 47 FR 44237, Oct. 7, 1982; 47 FR 44990, Oct. 13, 1982]

§ 242.18 Decision of special inquiry officer.

(a) *Contents.* The decision of the special inquiry officer may be oral or written. Except when deportability is determined on the pleadings pursuant to § 242.16(b), the decision of the special inquiry officer shall include a discussion of the evidence and findings as to deportability. The formal enumeration of findings is not required. The decision shall also contain a discussion of the evidence pertinent to any application made by the respondent under § 242.17 and the reasons for granting or denying the request. The decision shall be concluded with the order of the special inquiry officer.

(b) *Summary decision.* Notwithstanding the provisions of paragraph (a) of this section, in any case where deportability is determined on the pleadings pursuant to § 242.16(b) and the respondent does not make an application under § 242.17, or the respondent applies for voluntary departure only and the special inquiry officer grants the application, the special inquiry officer may enter a summary decision on Form I-38, if deportation is ordered, or on Form I-39, if voluntary departure is granted with an alternate order of deportation.

(c) *Order of the special inquiry officer.* The order of the special inquiry officer shall direct the respondent's deportation, or the termination of the proceedings, or such other disposition of the case as may be appropriate. When deportation is ordered, the special inquiry officer shall specify the country, or countries in the alternate, to which respondent's deportation shall be directed. The special inquiry officer is authorized to issue orders in the alternative or in combination as he may deem necessary.

[26 FR 12112, Dec. 19, 1961]

§ 242.19 Notice of decision.

(a) *Written decision.* A written decision shall be served upon the respondent and the trial attorney, together with the notice referred to in § 3.3 of this chapter. Service by mail is complete upon mailing.

(b) *Oral decision.* An oral decision shall be stated by the special inquiry officer in the presence of the respondent and the trail attorney, if any, at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall be furnished with Notice of Appeal, Form I-290A, and advised of the provisions of § 242.21. A typewritten copy of the oral decision shall be furnished at the request of the respondent or the trial attorney.

(c) *Summary decision.* When the special inquiry officer renders a summary decision as provided in § 242.18(b), he shall serve a copy thereof upon the respondent at the conclusion of the hearing. Unless appeal from the decision is waived, the respondent shall be furnished with Notice of Appeal, Form I-290A, and advised of the provisions of § 242.21.

[26 FR 12212, Dec. 19, 1961, as amended at 27 FR 9647, Sept. 29, 1962]

§ 242.20 Finality of order.

The order of the special inquiry officer shall be final except when the case is certified to the Board as provided in Part 3 of this chapter or an appeal is taken to the Board by the respondent or the trial attorney.

[27 FR 9647, Sept. 29, 1962]

§ 242.21 Appeals.

Pursuant to Part 3 of this chapter an appeal shall lie from a decision of a special inquiry officer under this part to the Board of Immigration Appeals. An appeal shall be taken within 10 days after the mailing of a written decision, or the stating of an oral decision, or the service of a summary decision on Form I-38 or Form I-39. The reasons for the appeal shall be stated briefly in the Notice of Appeal, Form I-290A; failure to do so may constitute a ground for dismissal of the appeal by the Board. When service of the decision is made by mail, as authorized by this section, 3 days shall be added to the period prescribed for the taking of an appeal.

[29 FR 7236, June 3, 1964]

§ 242.22 Reopening or reconsideration.

Except as otherwise provided in this section, a motion to reopen or reconsider shall be subject to the requirements of § 103.5 of this chapter. The immigration judge may upon his/her own motion, or upon motion of the trial attorney or the respondent, reopen or reconsider any case in which he/she had made a decision, unless jurisdiction in the case is vested in the Board of Immigration Appeals under Part 3 of this chapter. An order by the immigration judge granting a motion to reopen may be made on Form I-328. A motion to reopen will not be granted unless the immigration judge is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing; nor will any motion to reopen for the purpose of providing the respondent with an opportunity to make an application under § 242.17 be granted if respondent's right to make such application was fully explained to him/her by the immigration judge and he/she was afforded an opportunity to do so at the hearing, unless circumstances have arisen thereafter on the basis of which the request is being made. The filing of an application for adjustment of status under section 245 of the Act may be considered as a motion to reopen when the application shows new material not available or discoverable at the time of the deportation hearing. The filing of a motion under this section with an immigration judge shall not serve to stay the execution of an outstanding decision; execution shall proceed unless the immigration judge who has jurisdiction over the motion specifically grants a stay of deportation. The immigration judge may stay deportation pending his/her determination of the motion and also pending the taking and disposition of an appeal from such determination.

[46 FR 25598, May 8, 1981]

§ 242.23 Proceedings under section 242(f) of the Act.

(a) *Order to show cause.* In the case of an alien within the provisions of section 242(f) of the Act, the order to show cause shall charge him with deportability under section 242(f) of the Act. The prior order of deportation and evidence of the execution thereof, properly identified, shall constitute prima facie cause for deportability under this section.

(b) *Applicable procedure.* Except as otherwise provided in this section, proceedings under section 242(f) of the Act shall be conducted in general accordance with the rules prescribed in this part.

(c) *Deportability.* In determining the deportability of an alien alleged to be within the purview of paragraph (a) of this section, the issues shall be limited solely to a determination of the identity of the respondent, i.e., whether the respondent is in fact an alien who was previously deported, or who departed while an order of deportation was outstanding; whether the respondent was previously deported as a member of any of the classes described in paragraph (4), (5), (6), (7), (11), (12), (14), (15), (16), (17), or (18) of section 241(a) of the Act; and whether respondent has unlawfully reentered the United States.

(d) *Order.* If deportability as charged in the order to show cause is established, the special inquiry officer shall order that the respondent be deported under the previous order of deportation in accordance with section 242(f) of the Act.

(e) *Trial attorney; additional charges.* When a trial attorney is assigned to a proceeding under this section and additional charges are lodged against the respondent, the provisions of paragraphs (c) and (d) of this section shall cease to apply.

[26 FR 12282, Dec. 28, 1961, as amended at 27 FR 9647, Sept. 29, 1962; 30 FR 2021, Feb. 13, 1965]

PART 243—DEPORTATION OF ALIENS IN THE UNITED STATES

Sec.

243.1 Final order of deportation.
243.2 Warrant of deportation.
243.3 Expulsion.
243.4 Stay of deportation.
243.5 Self-deportation.
243.6 Notice to transportation line.
243.7 Special care and attention for aliens.
243.8 Imposition of sanctions.

AUTHORITY: Secs. 103, 242, 243, 66 Stat. 173, 208, as amended 212; 8 U.S.C. 1103, 1252, 1253.

SOURCE: 26 FR 12113, Dec. 19, 1961, unless otherwise noted.

§ 243.1 Final order of deportation.

Except as otherwise required by section 242(c) of the Act for the specific purposes of that section, an order of deportation, including an alternate order of deportation coupled with an order of voluntary departure, made by the special inquiry officer in proceedings under Part 242 of this chapter shall become final upon dismissal of an appeal by the Board of Immigration Appeals, upon waiver of appeal, or upon expiration of the time allotted for an appeal when no appeal is taken; or, if such an order is issued by the Board or approved by the Board upon certification, it shall be final as of the date of the Board's decision.

§ 243.2 Warrant of deportation.

A warrant of deportation based upon the final administrative order of deportation in the alien's case shall be issued by a district director. The district director shall exercise the authority contained in section 243 of the Act to determine at whose expense the alien shall be deported and whether his mental or physical condition requires personal care and attendance en route to his destination.

§ 243.3 Expulsion.

Once an order of deportation becomes final, an alien, not in the physical custody of the Service, shall be given not less than 72 hours advance notice in writing of the time and place of his surrender for deportation. If the alien fails to surrender as directed, he shall be deported without further notice when located. When an alien is directed to surrender for deportation, he shall do so notwithstanding the filing of an application for a stay of deportation unless he has been informed prior to the surrender date that a stay has been granted. The advance notice requirement above does not preclude taking an alien into custody at any time, including any time within the 72 hour period, if his being at large constitutes a danger to public safety or security, or the district director has reason to believe the alien is likely to abscond, or if information is received that the alien is likely to abscond. However, in such an instance, the alien's deportation shall not be effected prior to the expiration of 72 hours from the time of apprehension or of the 72 hour notice period, whichever is less. An alien shall be taken into custody prior to the time specified in the surrender notice only pursuant to an order by an official empowered under § 242.2(a) of this chapter to issue warrants of arrest.

[41 FR 38758, Sept. 13, 1976]

§ 243.4 Stay of deportation.

Any request of an alien under a final administrative order of deportation for a stay of deportation, except a request for withholding of deportation pursuant to section 243(h) of the Act, shall be filed on Form I-246 with the district director having jurisdiction over the place where the alien is at the time of filing. The district director, in his discretion, may grant a stay of deportation for such time and under such conditions as he may deem appropriate. Written notice of the disposition of the alien's request shall be served upon him and any notice of denial shall include specific reasons therefor; however, neither the making of the request nor the failure to receive notice of disposition of the request shall relieve the alien from strict compliance with any outstanding notice to surrender for deportation. Denial by the district director of a request for a stay is not appealable but such denial shall not preclude the Board from granting a stay in connection with a motion to reopen or a motion to reconsider as provided in Part 3 of this chapter, nor such denial preclude the special inquiry officer, in his discretion, from granting a stay in connection with, and pending his determination of, a motion to reopen or a motion to reconsider a case falling within his jurisdiction pursuant to § 242.22 of this chapter, and also pending an appeal from such determination.

[40 FR 50702, Oct. 31, 1975]

§ 243.5 Self-deportation.

A district director may permit an alien ordered deported to depart at his own expense to a destination of his own choice. Any alien who has departed from the United States while an order of deportation is outstanding shall be considered to have been deported in pursuance of law, except that an alien who departed before the expiration of the voluntary departure time granted in connection with an alternate order of deportation shall not be considered to have been so deported.

[29 FR 6485, May 19, 1964]

§ 243.6 Notice to transportation line.

When a transportation line is responsible for the expenses of an alien's deportation, notification shall be made to such line on Form I-284, when applicable, and Form I-288. If special care and attention is required, notification to this effect shall be placed on Form I-288.

§ 243.7 Special care and attention for aliens.

When a transportation line is responsible for the expenses of an alien's deportation, the alien shall be delivered to the master, commanding officer, or the officer in charge of the vessel or aircraft on which the alien will be deported, who shall be given Forms I-287, I-287A, and I-287B. The reverse of Form I-287A shall be signed by the officer of the vessel or aircraft to whom the alien has been delivered and immediately returned to the immigration officer effecting delivery. Form I-287B shall be retained by the receiving officer and subsequently filled out by the agents or persons therein designated and returned by mail to the district director named on the form. The transportation line shall at its own expense forward the alien from the foreign port of disembarkation to the final destination specified on Form I-287. The special care and attention shall be continued to such final destination, except when the foreign public officers decline to allow such attendant to proceed and themselves take charge of the alien, in which case this fact shall be recorded by the transportation line on the reverse of Form I-287B. If the transportation line fails, refuses, or neglects to provide the necessary special care and attention or comply with the directions of Form I-287, the district director shall thereafter and without notice employ suitable persons, at the expense of the transportation line, and effect such deportation.

§ 243.8 Imposition of sanctions.

The provisions of section 243(g) of the Act have been applied to residents of the Union of Soviet Socialist Republics, Czechoslovakia, Hungary, and Cuba. These provisions do not apply to an alien who is residing in Estonia, Latvia, or Lithuania who is not a national, citizen, or subject of the Union of Soviet Socialist Republics. These provisons also do not apply to an alien who is residing in Cuba and can be classified as an immediate relative as defined in section 201(b) or a returning resident as defined in section 101(a)(27)(A). The sanctions imposed on residents of the Union of Soviet Socialist Republics, Czechoslovakia, and Hungary pursuant to section 243(g) may be waived in an individual case for the beneficiary of a petition accorded a status under section 201(b) or section 203(a) of the Act. The sanctions upon the USSR, Czechoslovakia and Hungary may be waived upon an individual request by the Department of State in behalf of a visa applicant. Upon approval of a visa petition or upon an individual request by the Department of State in behalf of a visa applicant, the district director shall determine whether sanctions shall be waived. However, the regional commissioner or the Deputy Commissioner, may direct that any case or class of cases be referred to him for any such determination. The consular officer shall be notified of any determination made with respect to the waiver of sanctions if a visa petition is approved. If the sanctions are not waived, the notice informing the petitoner that the petition has been approved shall also notfiy him that the sanctions imposed by section 243(g) of the Act have not been waived.

[48 FR 39034, Aug. 29, 1983]

PART 244—SUSPENSION OF DEPORTATION AND VOLUNTARY DEPARTURE

Sec.

244.1 Application.
244.2 Extension of time to depart.

AUTHORITY: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103. Interpret or apply secs. 242, 244, 66 Stat. 208, 214; 8 U.S.C. 1252, 1254.

§ 244.1 Application.

Pursuant to Part 242 of this chapter and section 244 of the Act an immigration judge may authorize the suspension of an alien's deportation; or, if the alien establishes that he/she is willing and has the immediate means with which to depart promptly from the United States, an immigration judge may authorize the alien to depart voluntarily from the United States in lieu of deportation within such time as may be specified by the immigration judge when first authorizing voluntary departure, and under such conditions as the district director shall direct. An application for suspension of deportation shall be made on Form I-256A.

[46 FR 25598, May 8, 1981]

§ 244.2 Extension of time to depart.

Authority to extend the time within which to depart voluntarily specified initially by a special inquiry officer or the Board is within the sole jurisdiction of the district director. A request by an alien for an extension of time within which to depart voluntarily shall be filed with the district director having jurisdiction over the alien's place of residence. Written notice of the district director's decision shall be served upon the alien, and no appeal may be taken therefrom.

[33 FR 2381, Jan. 31, 1968]

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

Sec.

245.1 Eligibility.
245.2 Application.
245.3 Adjustment of status under section 13 of the Act of September 11, 1957, as amended.
245.4 Adjustment of status of aliens within the proviso to section 203(a)(7) of the Act.
245.5 Adjustment of status under the Nonimmigrant Alien Adjustment Act of 1982 (Pub. L. 97-271).
245.6 Documentary requirements.
245.7 Medical examination.
245.8 Interview.

AUTHORITY: Secs. 101, 103, 201, 203, 204, 212, 245, 247; 66 Stat. 166, 173, 175, 178, 179, 182, 217, and 218; 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1255, and 1257, unless otherwise noted.

§ 245.1 Eligibility.

(a) *General.* Any alien who was inspected and admitted or paroled into the United States, except an alien who is ineligible to apply for adjustment of status as noted in paragraph (b) of this section, may apply for adjustment of status to permanent resident if the applicant is eligible to receive an immigrant visa and an immigrant visa is immediately available at the time of filing of the application.

(b) *Ineligible aliens.* The following categories of aliens are ineligible to apply for adjustment of status to permanent residence under section 245 of the Act:

(1) Any alien who entered the United States in transit without a visa;

(2) Any alien who, on arrival in the United States, was serving in any capacity on board a vessel or aircraft or was destined to join a vessel or aircraft in the United States to serve in any capacity thereon;

(3) Any alien who was not admitted or paroled following inspection by an immigration officer;

(4) Any alien who on or after January 1, 1977 was employed in the United States without authorization prior to filing an application for adjustment of status, except an applicant who is an immediate relative as defined in section 201(b) of the Act or a special immigrant as defined in section 101(a)(27)(H) of the Act;

(5) Any nonpreference alien who is seeking or engaging in gainful employment in the United States who is not the beneficiary of a valid individual or blanket labor certification issued by the Secretary of Labor or who is not exempt from certification requirements under § 212.8(b) of this chapter;

(6) Any alien who has or had the status of an exchange visitor under section 101(a)(15)(J) of the Act and who is subject to the foreign residence requirement of section 212(e) of the Act, unless the alien has complied with the foreign residence requirement or has been granted a waiver of that requirement, under that section;

(7) Any alien who has nonimmigrant status under paragraph (15)(A), (15)(E), or (15)(G) of section 101(a) of the Act, or has an occupational status which would, if the alien were seeking admission to the United States, entitle the alien to nonimmigrant status under those paragraphs, unless the alien first executes and submits the written waiver required by section 247(b) of the Act and Part 247 of this chapter; and

(8) Any alien who claims immediate relative status under section 201(b) or preference status under sections 203(a)(1) through 203(a)(6) of the Act, unless the applicant is the beneficiary of a valid unexpired visa petition filed in accordance with Part 204 of this chapter.

(c) *Special categories*—(1) *Alien medical graduates.* Any alien who is a medical graduate qualified for special immigrant classification under section 101(a)(27)(H) of the Act is eligible for adjustment of status. An accompanying spouse and children also may apply for adjustment of status under this section. Temporary absences from the United States of 30 days or less do not interrupt the continuous presence requirement during which the applicant was practicing or studying medicine. Temporary absences authorized under the Service's advance parole procedures will not be considered in-

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terruptive of continuous presence when the alien applies for adjustment of status.

(2) *Nonpreference investors*—(i) Any alien investor, if otherwise qualified, is eligible for adjustment of status if:

(A) The applicant was present in the United States on or before June 1, 1978;

(B) The applicant qualified as a nonpreference immigrant under section 203(a)(8) of the Act as in effect on or before June 1, 1978;

(C) The applicant applied for adjustment of status on or before June 1, 1978;

(D) The applicant was determined to be exempt from the labor certification requirement of section 212(a)(14) of the Act because the applicant had actually invested capital in an enterprise in the United States before that date;

(E) The applicant was a principal manager of that enterprise; and

(F) That enterprise employed one or more U.S. citizens or permanent residents other than a spouse or child of the applicant.

(ii) The employment of the U.S. citizen or permanent resident may have occurred at any time and for any period of time in the enterprise or any subsequent enterprise.

(iii) Any applicant under this section may qualify with an investment in an enterprise other than that used to establish the applicant's priority date, or may qualify without a present investment.

(iv) Any applicant will have qualified as a nonpreference immigrant on or before June 1, 1978 for purposes of this section, if the application for investor status was actually approved on or before that date, or the application was subsequently approved with a priority date on or before June 1, 1978.

(v) Any alien qualified under this subsection is exempt from the restrictions of sections 212(a)(14) and 245(c)(2) of the Act.

(vi) A spouse or children of an investor qualified under this section may also apply for adjustment of status.

(d) *Concurrent applications to overcome exclusionary grounds.* Except as provided in Parts 235 and 249 of this chapter, an application under this part shall be the sole method of requesting the exercise of discretion under section 212 (g), (h), (i), and (k) of the Act, as they relate to the excludability of an alien in the United States. Any applicant for adjustment under this part may also apply for the benefits of section 212(c) of the Act, for permission to reapply after deportation or removal under section 212(a)(17) of the Act, and for the benefits of section 212(a)(28)(I)(ii) of the Act. No fee is required for filing an application to overcome the exclusionary grounds of the Act if filed concurrently with an application for adjustment of status under the provisions of the Act of October 28, 1977, and of this part.

(e) *Availability of immigrant visas under section 245 and priority dates*—(1) *Availability of immigrant visas under section 245.* An alien is ineligible for the benefits of section 245 of the Act unless an immigrant visa is immediately available to him at the time the application is filed. If the applicant is a preference or nonpreference alien, the current Department of State Visa Office Bulletin on Availability of Immigrant Visa Numbers will be consulted to determine whether an immigrant visa is immediately available. An immigrant visa is considered available for accepting and processing the application Form I-485 if the preference or nonpreference category applicant has a priority date on the waiting list which is no later than the date shown in the Bulletin or the Bulletin shows that numbers for visa applicants in his category are current. Information as to the immediate availability of an immigrant visa may be obtained at any Service office.

(2) *Priority dates.* The priority date of an applicant who is seeking the allotment of an immigrant visa number under one of the first six preference classes specified in section 203(a) of the Act by virtue of a valid visa petition approved in his behalf shall be fixed by the date on which such approved petition was filed. The priority date of an applicant who is seeking the allotment of a nonpreference immigrant visa number shall be fixed by the following factors, whichever is the earliest: (i) The priority date accorded the applicant by the consular officer as a nonpreference immigrant; (ii) the

date on which Form I-485 is filed if the applicant establishes that he is qualified for and will be engaged in an occupation currently listed in Schedule A (20 CFR Part 656), or that the provisions of section 212(a)(14) of the Act do not apply to him; or (iii) the date on which an approved valid third or sixth preference visa petition in his behalf was filed; or (iv) the date an application for certification based on a job offer was accepted for processing by any office within the employment service system of the Department of Labor, provided the certification applied for was issued. A nonpreference priority date, once established, is retained by the alien even though at the time a visa number becomes available and he is allotted a nonpreference visa number he meets the provisions of section 212(a)(14) of the Act by some means other than that by which he originally established entitlement to the nonpreference priority date.

(f) *Indochinese refugee.* An alien who ordered, assisted, or otherwise participated in the persecution of any person because of race, religion, or political opinion is not eligible for the benefits under any provisions of the Act of October 28, 1977. An alien is not eligible for the benefits of any provisions of the Act of October 28, 1977, unless he has been physically present in the United States for at least one year subsequent to March 31, 1975 and prior to the date of filing the application for adjustment of status. An alien is not eligible for the benefits of section 101 or 103 of the Act of October 28, 1977, unless he is a native or citizen of Vietnam, Laos, or Cambodia who was paroled into the United States as a refugee from those countries under section 212(d)(5) of the Immigration and Nationality Act subsequent to March 31, 1975, but prior to January 1, 1979; or who was inspected and admitted or paroled into the United States on or before March 31, 1975, and was physically present in the United States on March 31, 1975.

(Title I of Pub. L. 95-145 enacted Oct. 28, 1977 (91 Stat. 1223), sec. 103 of the Immigration and Nationality Act (8 U.S.C. 1103). Interpret or apply secs. 101, 212, 242 and 245 (8 U.S.C. 1101, 1182, 1252 and 1255))

[30 FR 14778, Nov. 30, 1965, as amended at 41 FR 55850, Dec. 29, 1976; 43 FR 18644, May 2, 1978; 45 FR 37396, June 2, 1980; 47 FR 12133, Mar. 22, 1982; 47 FR 44237, Oct. 7, 1982]

§ 245.2 Application.

(a) *General*—(1) *Jurisdiction.* An alien who believes he meets the eligibility requirements of section 245 of the Act or section 1 of the Act of November 2, 1966, or section 101 or 104 of the Act of October 28, 1977, and § 245.1 of this chapter shall apply to the district director having jurisdiction over his place of residence. After an alien has been served with an order to show cause or warrant of arrest, his application for adjustment of status under section 245 of the Act or section 1 of the Act of November 2, 1966 or section 101 or 104 of the Act of October 28, 1977, shall be made and considered only in proceedings under Part 242 of this chapter. An adjustment application by an alien paroled under section 212(d)(5) of the Act, which has been denied by the district director, may be renewed in exclusion proceedings under section 236 of the Act only under the following two conditions: First, the denied application must have been properly filed subsequent to the applicant's earlier inspection and admission to the United States; second, the applicant's later absence from and return to the United States must have been under the terms of an advance parole authorization on Form I-512 granted to permit the applicant's absence and return to pursue the previously filed adjustment application.

(2) *Filing application.* Before an application for adjustment of status under section 245 of the Act may be considered properly filed, a visa must be immediately available. If a visa would be immediately available only upon approval of a visa petition, the application will not be considered properly filed unless such petition has first been approved. If a visa petition is submitted simultaneously with the adjustment application, the adjustment application shall be retained for processing only if approval of the petition when reached for adjudication would make a visa immediately available at the time of filing of the adjust-

ment application. If such petition is subsequently approved, the date of filing the adjustment application shall be deemed the date on which the accompanying petition was filed. If the applicant is claiming that the provisions of section 212(a)(14) of the Act do not apply to him because he is within the exemption described in § 212.8(b)(4) of this chapter, the application shall not be considered properly filed unless it is accompanied by Form I-526. An application for adjustment of status under section 245 of the Act as a nonpreference alien shall not be considered properly filed unless the applicant establishes that he is entitled to a priority date for allotment of a nonpreference visa number in accordance with § 245.1(e)(2) and that a visa is immediately available within the contemplation of § 245.1(e)(1). A nonpreference alien for whom a visa is not immediately available may not file an application for adjustment of status, but may seek to establish a nonpreference priority date through an application for an immigrant visa at a United States consular office. The application under section 245 of the Act shall be made on Form I-485, while the application under section 1 of the Act of November 2, 1966, shall be made on Form I-485A, and the application under section 101 or 104 of the Act of October 28, 1977, shall be made on Form I-485C. A separate application shall be filed by each applicant. Each application shall be accompanied by executed Form G-325A, if the applicant has reached his 14th birthday, which shall be considered as part of the application. An application under this part shall be accompanied by the documents specified in the instructions which are attached to the application. No fee shall be required for filing an application for the benefits of the Act of November 2, 1966 or the Act of October 28, 1977. An application for adjustment of status under section 101 or 104 of the Act of October 28, 1977, shall not be considered properly filed for acceptance and processing unless filed on or before October 28, 1983. An alien is ineligible for the benefits of the Act of October 28, 1977, unless he has been physically present in the United States for at least two years. An applicant is considered to have been physically present in the United States for at least two years within the meaning of the Act of October 28, 1977, only if he has been actually physically present in the United States for a period or periods in the aggregate of at least two years subsequent to March 31, 1975 and prior to the date of filing the application. An application for adjustment of status under the Act of October 28, 1977, by the spouse or child of a native or citizen of Vietnam, Laos or Cambodia shall not be processed under the provisions of section 104 of that Act unless the applicant is ineligible for adjustment under the provisions of section 101 of that Act. For the purpose of section 104 of the Act of October 28, 1977, a spouse or child, regardless of nationality, of a native or citizen of Vietnam, Laos or Cambodia shall, upon approval of an application for adjustment of status, be accorded permanent residence as of the date accorded the alien through whom such spouse or child derives eligibility under section 104 or the date of such spouse or child's arrival in the United States, whichever is later.

(3) *Departure.* The departure from the United States of an applicant for permanent resident status under section 245 of the Act or this part who is under deportation proceedings shall be deemed an abandonment of his application constituting grounds for termination thereof if the deportation proceeding is terminated by reason of the departure. The departure of an applicant who is not under deportation proceedings shall be deemed an abandonment of his application constituting grounds for termination thereof unless he had previously been granted permission by the Service for such absence and he was thereafter inspected upon his return, or it is determined by the officer having jurisdiction over his application that his departure was unintended or innocent and casual, that his absence was brief, and that he was inspected upon his return. If the determination reached is favorable to the applicant, the application shall be adjudicated without regard to the departure and absence. In determining the date of "last arrival" within the

meaning of section 1 of the Act of November 2, 1966, in the case of an applicant who was inspected and admitted or paroled into the United States subsequent to January 1, 1959, and who subsequently departed temporarily with no intention of abandoning his residence in the United States and was readmitted or paroled into the United States upon his return, the date of the applicant's arrival after such temporary absence or absences shall not be included. In determining the date of the alien's "arrival" in the United States within the meaning of section 102 of the Act of October 28, 1977, in the case of an applicant who was physically present in the United States on March 31, 1975 or who was paroled into the United States subsequent to March 31, 1975, but prior to January 1, 1979, and who subsequently departed temporarily with no intention of abandoning his residence in the United States and was readmitted or paroled into the United States upon his return, the date of the applicant's arrival after such temporary absence or absences shall be disregarded. For the purpose of section 102 of the Act of October 28, 1977, the date of the alien's "arrival" in the United States shall be the date of initial parole subsequent to March 31, 1975, but prior to January 1, 1979 as an Indochinese refugee under section 212(d)(5) of the Immigration and Nationality Act.

(4) *Decision.* The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor. Except as otherwise provided in this paragraph, no appeal shall lie from the denial of an application by the district director but such denial shall be without prejudice to the alien's right to renew his application in proceedings under Part 242 of this chapter, or under Part 236 if the alien is a parolee who meets the conditions specified in paragraph (a)(1) of this section. An application for adjustment of status under section 245 of the Act as a preference or nonpreference alien shall not be approved until an immigrant visa number has been allocated by the Department of State. An appeal shall lie from the decision of the district director on an application for the benefits of section 101 or 104 of the Act of October 28, 1977; if the application is denied, the applicant shall be advised of his right to appeal in accordance with the provisions of Part 103 of this chapter. No fee shall be required for filing such appeal.

(b) *Application by nonpreference alien seeking adjustment of status for purpose of engaging in gainful employment*—(1) *Alien whose occupation is included in Schedule A (20 CFR Part 656).* An applicant for adjustment of status as a nonpreference alien under section 245 of the Act who is subject to the labor certification requirement of section 212(a)(14) of the Act must submit Statement of Qualifications of Alien form with his application, if he is qualified for and will be engaged in an occupation currently listed in Schedule A (20 CFR Part 656). The Statement of Qualifications of Alien form must be executed in accordance with the instructions for completion of that form, and must be accompanied by the evidence of the applicant's qualifications specified in the instructions attached to the application for adjustment of status. The other documents specified in § 245.2(a) must also be submitted in support of the application for adjustment of status. Determination concerning certification under section 212(a)(14) of the Act will be made in accordance with the pertinent provisions of § 204.2(e)(4) of this chapter.

(2) *Other nonpreference aliens who will engage in gainful employment.* An applicant for adjustment of status as a nonpreference alien under section 245 of the Act, who is subject to the labor certification requirement of section 212(a)(14) of the Act and whose occupation is not listed in Schedule A, must submit the certification with his application. In such case the applicant's employer or prospective employer makes the application for the certification to the local State Employment Service.

(c) *Application under section 2 of the Act of November 2, 1966.* An application by a native or citizen of Cuba or by his spouse or child residing in the United States with him, who was lawfully admitted to the United States for permanent residence prior to November 2, 1966, and who desires such admission to be recorded as of an earlier date pursuant to section 2 of the Act of November 2, 1966, shall be made on Form I-485A. The application shall be accompanied by the Alien Registration Receipt Card, Form I-151 or I-551, issued to the applicant in connection with his lawful admission for permanent residence, and shall be submitted to the district director having jurisdiction over the applicant's place of residence in the United States. The decision on the application shall be made by the district director. No appeal shall lie from his decision. If the application is approved, the applicant will be furnished with a replacement of his Form I-151 or I-551 bearing the new date as of which the lawful admission for permanent residence has been recorded.

(d) *Application under section 214(d).* An application for permanent resident status pursuant to section 214(d) of the Act shall be filed on Form I-485 with the district director having jurisdiction over the applicant's place of residence. A separate application shall be filed by each applicant. If the application is approved, the district director shall record the lawful admission of the applicant as of the date of approval. The fee previously paid for filing the application shall be considered payment of the required visa fees, as of the date of the approval of the application. The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor. No appeal shall lie from the denial of an application by the district director but such denial shall be without prejudice to the alien's right to renew his application in proceedings under Part 242 of this chapter.

(e) *Application under section 103 of the Act of October 28, 1977.* An application by a native or citizen of Vietnam, Laos, or Cambodia who was lawfully admitted to the United States for permanent residence under the provisions of the Immigration and Nationality Act subsequent to March 31, 1975 but prior to October 28, 1977, and who desires such admission to be recorded as of an earlier date pursuant to section 103 of the Act of October 28, 1977, shall be made on Form I-485C. The application shall be submitted to the district director having jurisdiction over the applicant's place of residence in the United States. The decision on the application shall be made by the district director. The applicant shall be notified of the decision and, if the application is denied, of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter. No fee shall be required either for the filing of the application or for the filing of the appeal. If the application is approved, the applicant, upon surrender of his Form I-551, will be furnished with a replacement thereof bearing the new date as of which the lawful admission for permanent residence has been recorded.

(Title I of Pub. L. 95-145 enacted Oct. 28, 1977 (91 Stat. 1223), sec. 103 of the Immigration and Nationality Act (8 U.S.C. 1103). Interpret or apply secs. 101, 212, 242 and 245 (8 U.S.C. 1101, 1182, 1252 and 1255))

[30 FR 14778, Nov. 30, 1965, as amended at 31 FR 15235, Dec. 6, 1966; 33 FR 17136, Nov. 19, 1968; 35 FR 5960, Apr. 10, 1970; 36 FR 18784, Sept. 22, 1971; 36 FR 23619, Dec. 11, 1971; 38 FR 11340, May 7, 1973; 38 FR 33062, Nov. 30, 1973; 41 FR 55850, Dec. 12, 1976; 43 FR 18644, May 2, 1978; 45 FR 32657, May 19, 1980; 48 FR 20685, May 9, 1983]

§ 245.3 Adjustment of status under section 13 of the Act of September 11, 1957, as amended.

Any application for benefits under section 13 of the Act of September 11, 1957, as amended, must be filed on Form I-485 with the district director having jurisdiction over the applicant's place of residence. The benefits under section 13 are limited to aliens who were admitted into the United States under section 101, paragraphs (a)(15)(A)(i), (a)(15)(A)(ii), (a)(15)(G)(i), or (a)(15)(G)(ii) of the Immigration and Nationality Act who performed diplomatic or semi-diplomatic duties and to their immediate families, and who establish that there are compelling reasons why the applicant or the member of the applicant's immediate family is unable to return to the country represented by the government which accredited the applicant and that adjustment of the applicant's status to that of an alien lawfully admitted for permanent residence would be in the national interest. Aliens whose duties were of a custodial, clerical, or menial nature, and members of their immediate families, are not eligible for benefits under section 13. In view of the annual limitation of 50 on the number of aliens whose status may be adjusted under section 13, any alien who is prima facie eligible for adjustment of status to that of a lawful permanent resident under another provision of law shall be advised to apply for adjustment pursuant to such other provision of law. An applicant for the benefits of section 13 shall not be subject to the labor certification requirement of section 212(a)(14) of the Immigration and Nationality Act. The applicant shall be notified of the decision and, if the application is denied, of the reasons for the denial and of the right to appeal under the provisions of Part 103 of this chapter. Any applications pending with the Service before December 29, 1981 must be resubmitted to comply with the requirements of this section.

(Secs. 103, 245, of the Immigration and Nationality Act, as amended; 71 Stat 642, as amended, sec. 17, Pub. L. 97-116, 95 Stat. 1619 (8 U.S.C. 1103, 1255, 1255b))

[47 FR 44238, Oct. 7, 1982]

§ 245.4 Adjustment of status of aliens within the proviso to section 203(a)(7) of the Act.

(a) *Adjustment of status of aliens within the proviso to section 203(a)(7) of the Act.* The proviso to section 203(a)(7) of the Act was repealed by the Refugee Act of 1980, effective April 1, 1980. Adjustment thereunder is therefore no longer possible. However, any properly filed adjustment application under that proviso pending on March 31, 1980, may be adjudicated as an application under section 209(b) of the Act and Part 209 of this chapter, and may be approved if it satisfies all of the conditions of that section and part. For this purpose, the applicant found to be a refugee within the meaning of section 101(a)(42)(A) of the Act (or the spouse or child of such refugee), who had not earlier been granted asylum, may be deemed to have been granted asylum as of the date the adjustment application was filed.

(b) *Adjustment of status of aliens under section 209(b) of the Act.* For the regulation affecting adjustment of aliens under this section of the Act, see Part 209 of the chapter.

(Secs. 103, 209, 245; Stat. 105; 8 U.S.C. 1103, 1159, 1255)

[45 FR 37396, June 2, 1980]

§ 245.5 Adjustment of status under the Nonimmigrant Alien Adjustment Act of 1982 (Pub. L. 97-271).

(a) *Application.* Each person applying for benefits under the Virgin Islands Nonimmigrant Alien Adjustment Act (Pub. L. 97-271) must file a Form I-485 application with the district director having jurisdiction over the Virgin Islands of the United States. Each applicant must file a separate application with the appropriate fee. No application for benefits under Pub. L. 97-271 may be filed after September 30, 1983.

(b) *Eligibility.* Benefits under Pub. L. 97-271 are limited to aliens who—

(1) Were inspected and admitted to the Virgin Islands of the United States either as nonimmigrant workers under section 101(a)(15)(H)(ii) of the Act or as the spouses or minor children of such workers;

(2) Have resided continuously in the Virgin Islands of the United States since June 30, 1975;

(3) Are physically present in the Virgin Islands of the United States at the time of filing of the applications; and

(4) Are admissible to the United States except under paragraphs (14), (20), (21), (25), and (32) of section 212(a) of the Act.

(Secs. 103, 214, 245 Immigration and Nationality Act, as amended; (8 U.S.C. 1103, 1184, 8 U.S.C. 1255, Sec. 2, 96 Stat. 1157, 8 U.S.C. 1255 note))

[48 FR 4770, Feb. 3, 1983]

§ 245.6 Documentary requirements.

The provisions of Part 211 of this chapter relating to the documentary requirements for immigrants shall not apply to an applicant under this part.

(Secs. 103, 214, 245 Immigration and Nationality Act, as amended; (8 U.S.C. 1103, 1184, 8 U.S.C. 1255, Sec. 2, 96 Stat. 1157, 8 U.S.C. 1255 note))

[30 FR 14779, Nov. 30, 1965. Redesignated at 48 FR 4770, Feb. 3, 1983]

§ 245.7 Medical examination.

Upon acceptance of an application, the applicant shall be required to submit to an examination by a selected civil surgeon, whose report setting forth the findings of the mental and physical condition of the applicant shall be incorporated into the record. Medical examination of an applicant for adjustment of status under the provisions of the Act of October 28, 1977, who was paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act, and who was medically examined when processed for parole by a Service officer in the United States or abroad, shall not be required unless medical grounds for exclusion existed when the applicant was processed for parole or such grounds presently appear to exist. Any applicant certified under paragraphs (1), (2), (3), (4), or (5) of section 212(a) of the Act may appeal to a Board of Medical Officers of the U.S. Public Health Service as provided in section 234 of the Act and Part 235 of this chapter.

(Title I of Pub. L. 95-145 enacted Oct. 28, 1977 (91 Stat. 1223), sec. 103 of the Immigration and Nationality Act (8 U.S.C. 1103). Interpret or apply secs. 101, 212, 242 and 245 (8 U.S.C. 1101, 1182, 1252 and 1255); secs 103, 214, 245 Immigration and Nationality Act, as amended; (8 U.S.C. 1103, 1184, 8 U.S.C. 1255, Sec. 2, 96 Stat. 1157, 8 U.S.C. 1255 note))

[38 FR 33062, Nov. 30, 1973, as amended at 43 FR 18645, May 2, 1978. Redesignated at 48 FR 4770, Feb. 3, 1983]

§ 245.8 Interview.

Each applicant for adjustment of status under this part shall be interviewed by an immigration officer. The interview may be waived in the case of a child under the age of 14, or when the applicant is clearly ineligible under section 245(c) of the Act or § 245.1.

(Pub. L. 94-571 enacted October 20, 1976, (90 Stat. 2703) and sec. 103 of the Immigration and Nationality Act (8 U.S.C. 1103). Interpret or apply secs. 101, 201, 202, 203, 204, 205, 211, 212, and 245. (8 U.S.C. 1101, 1151, 1152, 1153, 1154, 1155, 1181, 1182, and 1255); secs. 103, 214, 245 Immigration and Nationality Act, as amended; (8 U.S.C. 1103, 1184, 8 U.S.C. 1255, Sec. 2, 96 Stat. 1157, 8 U.S.C. 1255 note))

[41 FR 55851, Dec. 23, 1976. Redesignated at 48 FR 4770, Feb. 3, 1983]

PART 246—RESCISSION OF ADJUSTMENT OF STATUS

Sec.

246.1 Notice.
246.2 Allegations admitted; no answer filed; no hearing requested.
246.3 Allegations contested or denied; hearing requested.
246.4 Special inquiry officer's authority; withdrawal and substitution.
246.5 Hearing.
246.6 Decision and order.
246.7 Appeals.
246.8 Reopening or reconsideration.
246.9 Surrender of Form I-151 or I-551.

AUTHORITY: Secs. 103, 244, 245, 246, 249, 66 Stat. 173, 214, 217, 219; 8 U.S.C. 1103, 1254, as amended, 1255, as amended, 1256, 1259, as amended.

SOURCE: 27 FR 10789, Nov. 6, 1962, unless otherwise noted.

§ 246.1 Notice.

If it appears to a district director that a person residing in his district was not in fact eligible for the adjustment of status made in his case, a proceeding shall be commenced by the personal service upon such person of a notice of intention to rescind which shall inform him of the allegations upon which it is intended to rescind the adjustment of his status. In such a proceeding the person shall be known as the respondent. The notice shall also inform the respondent that he may submit, within thirty days from the date of service of the notice, an answer in writing under oath setting forth reasons why such rescission shall not be made, and that he may, within such period, request a hearing before a special inquiry officer in support of, or in lieu of his written answer. The respondent shall further be informed that he may have the assistance of or be represented by counsel or representative of his choice qualified under Part 292 of this chapter, without expense of the Government, in the preparation of his answer or in connection with his hearing, and that he may present such evidence in his behalf as may be relevant to the rescission.

[28 FR 6737, June 29, 1963, as amended at 37 FR 11471, June 8, 1972]

§ 246.2 Allegations admitted; no answer filed; no hearing requested.

If the answer admits all the allegations in the notice, or if no answer is filed within the thirty-day period, or if no hearing is requested within such period, and the status of that of a permanent resident was acquired through suspension of deportation under section 19(c) of the Immigration Act of February 5, 1917, or under section 244 of the Immigration and Nationality Act, the district director shall forward the respondent's file containing a copy of the notice and the answer, if any, to the regional commissioner for further action in accordance with section 246 of the Immigration and Nationality Act. If the answer admits the allegations in the notice, or if no answer is filed within the thirty-day period, or if no hearing is requested within such period, and the status of that of a permanent resident was acquired through adjustment of status under section 245 or 249 of the Immigration and Nationality Act, the district director shall rescind the adjustment of status previously granted, and no appeal shall lie from his decision.

§ 246.3 Allegations contested or denied; hearing requested.

If, within the prescribed time following service of the notice pursuant to § 246.1, the respondent has filed an answer which contests or denies any allegation in the notice, or a hearing is requested, a hearing pursuant to § 246.5 shall be conducted by a special inquiry officer and the procedures specified in §§ 242.10, 242.11, 242.12, 242.13, 242.14 (c), (d) and (e), and 242.15 of this chapter shall apply.

[29 FR 13243, Sept. 24, 1964]

§ 246.4 Special inquiry officer's authority; withdrawal and substitution.

In any proceeding conducted under this part, the special inquiry officer shall have authority to interrogate, examine, and cross-examine the respondent and other witnesses, to present and receive evidence, to determine whether adjustment of status shall be rescinded, to make decisions thereon, including an appropriate order, and to take any other action consistent with applicable provisions of law and regulations as may be appropriate to the disposition of the case. Nothing contained in this part shall be construed to diminish the authority conferred on special inquiry officers by the Act. The special inquiry officer assigned to conduct a hearing shall, at any time, withdraw if he deems himself disqualified. If a hearing has begun but no evidence has been adduced other than the notice and answer, if any, pursuant to §§ 246.1 and 246.2, or if a special inquiry officer becomes unavailable to complete his duties within a reasonable time, or if at any time the respondent consents to a substitution, another special inquiry officer may be assigned to complete the case. The new special inquiry officer shall familiarize himself with the record in the case and shall state for the record that he has done so.

§ 246.5 Hearing.

(a) *Trial attorney.* The Government shall be represented at the hearing by a trial attorney who shall have authority to present evidence, and to interrogate, examine, and cross-examine the respondent and other witnesses. The trial attorney is authorized to appeal from a decision of the special inquiry officer pursuant to § 246.7 and to move for reopening or reconsideration pursuant to § 246.8.

(b) *Opening.* The special inquiry officer shall advise the respondent of the nature of the proceeding and the legal authority under which it is conducted; advise the respondent of his right to representation, at no expense to the Government, by counsel of his own choice qualified under Part 292 of this chapter and require him to state then and there whether he desires representation; advise the respondent that he will have a reasonable opportunity to examine and object to the evidence against him, to present evidence in his own behalf, and to cross-examine witnesses presented by the Government; place the respondent under oath; read the allegations in the notice to the respondent and explain them in nontechnical language, and enter the notice and respondent's answer, if any, as exhibits in the record.

(c) *Pleading by respondent.* The special inquiry officer shall require the respondent to state for the record whether he admits or denies the allegations contained in the notice, or any of them, and whether he concedes that his adjustment of status should be rescinded. If the respondent admits all of the allegations and concedes that the adjustment of status in his case should be rescinded under the allegations set forth in the notice, and the special inquiry officer is satisfied that no issues of law or fact remain, he may determine that rescission as alleged has been established by the respondent's admissions. The allegations contained in the notice shall be taken as admitted when the respondent, without reasonable cause, fails or refuses to attend or remain in attendance at the hearing.

§ 246.6 Decision and order.

The decision of the special inquiry officer may be oral or written. Except when a determination of rescission is based on the respondent's admissions pursuant to § 246.5(c), the decision shall include a discussion of the evidence and findings as to rescission. The formal enumeration of findings is not required. The order shall direct either that the proceeding be terminated or that the adjustment of status be rescinded. If status was adjusted through suspension of deportation, the rescission order shall further provide that the matter be referred to Congress pursuant to section 246 of the Immigration and Nationality Act. Service of the decision and finality of the order of the special inquiry officer shall be in accordance with, and as stated in §§ 242.19 (a) and (b) and 242.20 of this chapter.

§ 246.7 Appeals.

Pursuant to Part 3 of this chapter, an appeal shall lie from a decision of a special inquiry officer under this part to the Board of Immigration Appeals. An appeal shall be taken within 10 days after the mailing of a written decision or the stating of an oral decision. The reasons for the appeal shall be stated briefly in the Notice of Appeal, Form I-290A; failure to do so may constitute a ground for dismissal of the appeal by the Board. When service of the decision is made by mail, as authorized by this section, 3 days shall be added to the period prescribed for the taking of an appeal.

[29 FR 7236, June 3, 1964]

§ 246.8 Reopening or reconsideration.

Except as otherwise provided in this section, a motion to reopen or reconsider shall be subject to the requirements of § 103.5 of this chapter. The special inquiry officer may upon his own motion, or upon motion of the trial attorney or the respondent, reopen or reconsider any case in which he has made a decision, unless jurisdiction in the case is vested in the Board under Part 3 of this chapter. A motion to reopen will not be granted by a special inquiry officer unless he is satisfied that evidence sought to be offered is material and was not available and could not have been discovered or presented at the hearing.

§ 246.9 Surrender of Form I-151 or I-551.

A respondent whose status as a permanent resident has been rescinded in accordance with section 246 of the Immigration and Nationality Act and this part, shall, upon demand, promptly surrender to the district director having administrative jurisdiction over the office in which the action under this part was taken, the Form I-151 or I-551 issued to him at the time of the grant of permanent resident status.

[27 FR 10789, Nov. 6, 1962, as amended at 45 FR 32657, May 19, 1980]

PART 247—ADJUSTMENT OF STATUS OF CERTAIN RESIDENT ALIENS

Sec.
247.1 Scope of part.
247.11 Notice.
247.12 Disposition of case.
247.13 Disposition of Form I-508.
247.14 Surrender of documents.

AUTHORITY: Secs. 101, 103, 247, 66 Stat. 166, 173, 218; 8 U.S.C. 1101, 1103, 1257.

§ 247.1 Scope of part.

The provisions of this part apply to an alien who is lawfully admitted for permanent residence and has an occupational status which, if he were seeking admission to the United States, would entitle him to a nonimmigrant status under paragraph (15)(A) or (15)(G) of section 101(a) of the Act, and to his immediate family; also, an alien who was lawfully admitted for permanent residence and has an occupational status which, if he were seeking admission to the United States, would entitle him to a nonimmigrant status under paragraph (15)(E) of section 101(a) of the Act, and to his spouse and children.

[22 FR 9801, Dec. 6, 1957]

§ 247.11 Notice.

If it appears to a district director that an alien residing in his district, who was lawfully admitted for permanent residence, has an occupational status described in section 247 of the Act, he shall cause a notice on Form I-509 to be served on such alien by personal service informing him that it is proposed to adjust his status, unless the alien requests that he be permitted to retain his status as a resident alien and executes and files with such district director a Form I-508 (Waiver of Rights, Privileges, Exemptions and Immunities) and, if a French national receiving salary from the French Republic, Form I-508F (election as to tax exemption under the Convention between the United States and the French Republic), within 10 days after service of the notice, or the alien, within such 10-day period, files with the district director a written answer under oath setting forth reasons why his status should not be adjusted. The notice shall also advise the person that he may, within such period and upon his request have an opportunity to appear in person, in support or in lieu of his written answer, before an immigration officer designated for that purpose. The person shall further be advised that he may have the assistance of counsel without expense to the Government of the United States in the preparation of his answer or in connection with such personal appearance, and may examine the evidence upon which it is proposed to base such adjustment.

[22 FR 9801, Dec. 6, 1957, as amended at 37 FR 11471, June 8, 1972]

§ 247.12 Disposition of case.

(a) *Allegations admitted or no answer filed.* If the waiver Form I-508 and, if applicable, Form I-508F is not filed by the alien within the time prescribed, and the answer admits the allegations in the notice, or no answer is filed, the district director shall place a notation on the notice describing the alien's adjusted nonimmigrant status and shall cause a set of Forms I-94 to be prepared evidencing the nonimmigrant classification to which the alien has been adjusted and no appeal shall lie from such decision. Form I-94A shall be delivered to the alien and shall constitute notice to him of such adjustment. The alien's nonimmigrant status shall be for such time, under such conditions, and subject to such regulations as are applicable to the particular nonimmigrant status granted and shall be subject to such other terms and conditions, including the exaction of bond as the district director may deem appropriate.

(b) *Answer filed; personal appearance.* Upon receipt of an answer asserting a defense to the allegations made in the notice without requesting a personal appearance, or if a personal appearance is requested or directed, the case shall be assigned to an immigration officer. Pertinent evidence, including testimony of witnesses, shall be incorporated in the record. The immigration officer shall prepare a report summarizing the evidence and containing his findings and recommendation. The record, including the report and recommendation of the immigration officer, shall be forwarded to the district director who caused the notice to be served. The district director shall note on the report of the immigration officer whether he approves or disapproves the recommendation of the immigration officer. If the decision of the district director is that the matter be terminated, the alien shall be informed of such decision. If the decision of the district director is that the status of the alien should be adjusted to that of a nonimmigrant, his decision shall provide that unless the alien, within 10 days of receipt of notification of such decision, requests permission to retain his status as an immigrant and files with the district director Form I-508 and, if applicable, Form I-508F, the alien's immigrant status be adjusted to that of a nonimmigrant. The alien shall be informed of such decision and of the reasons therefor, and of his right to appeal in accordance with the provisions of Part 103 of this chapter. If the alien does not request that he be permitted to retain status and file the Form I-508 and, if applicable, Form I-508F within the period provided therefor, the district director, without further notice to the alien, shall cause a set of Forms I-94 to be prepared evidencing the nonimmigrant classification to which the alien has been adjusted. Form I-94A shall be delivered to the alien. The alien's nonimmigrant status shall be for such time, under such conditions, and subject to such regulations as are applicable to the particular nonimmigrant status created and shall be subject to such other terms and conditions, including the exaction of bond, as the district director may deem appropriate.

[22 FR 9801, Dec. 6, 1957, as amended at 23 FR 9124, Nov. 26, 1958; 35 FR 13829, Sept. 1, 1970]

§ 247.13 Disposition of Form I-508.

If Form I-508 is executed and filed, the duplicate copy thereof (noted to show the election made on Form I-508F, if applicable) shall be filed in the office of the Assistant Commissioner, Administrative Division, and may be made available for inspection by any interested officer or agency of the United States.

[35 FR 13829, Sept. 1, 1970]

§ 247.14 Surrender of documents.

An alien whose status as a permanent resident has been adjusted to that of a nonimmigrant in accordance with section 247 of the Act and this part, shall, upon demand, promptly surrender to the district director having administrative jurisdiction over the office in which the action under this part was taken any documents (such as Form I-151 or I-551 or any other form of alien-registration receipt card, immigrant identification card, resident alien's border-crossing identification card (Form I-187), certificate of registry, or certificate of lawful entry) in his possession evidencing his former permanent resident status.

[22 FR 9802, Dec. 6, 1957, as amended at 45 FR 32657, May 19, 1980]

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

Sec.
248.1 Eligibility.
248.2 Ineligible classes.
248.3 Application.

AUTHORITY: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103. Interpret or apply secs. 101, 247, 248, 66 Stat. 167, as amended, 218, as amended; 8 U.S.C. 1101, 1257, 1258.

§ 248.1 Eligibility.

(a) *General.* Except for those classes enumerated in § 248.2, any alien lawfully admitted to the United States as a nonimmigrant, including an alien who acquired such status pursuant to section 247 of the Act, who is continuing to maintain his nonimmigrant status, may apply to have his nonimmigrant classification changed to any nonimmigrant classification other than that of a fiancee or fiance under section 101(a)(15)(K) of the Act.

(b) *Maintenance of status.* In determining whether an applicant has continued to maintain nonimmigrant status, the district director shall consider whether the alien has remained in the United States for a longer period than that authorized by the Service. The district director shall consider any conduct by the applicant relating to the maintenance of the status from which the applicant is seeking a change. An applicant may not be considered as having maintained nonimmigrant status within the meaning of this section if the applicant failed to submit an application for change of nonimmigrant classification before the applicant's authorized temporary stay in the United States expired, unless the district director determines that—

(1) The failure to file a timely application is excusable;

(2) The alien has not otherwise violated the nonimmigrant status;

(3) The alien is a bona fide nonimmigrant; and

(4) The alien is not the subject of deportation proceedings under Part 242 of this chapter.

(c) *Change of nonimmigrant classification to that of a nonimmigrant student.* A nonimmigrant applying for a change to classification as a student under sections 101(a)(15)(F)(i) or 101(a)(15)(M)(i) of the Act is not considered ineligible for such a change solely because the applicant may have started attendance at school before the application was submitted. The district director shall deny an application for a change to classification as a student under section 101(a)(15)(M)(i) of the Act if the applicant intends to pursue the course of study solely in order to qualify for a subsequent change of nonimmigrant classification to that of an alien temporary worker under section 101(a)(15)(H) of the Act. Furthermore, an alien may not change from classification as a student under section 101(a)(15)(M)(i) of the Act to that of a student under section 101(a)(15)(F)(i) of the Act.

(d) *Application for change of nonimmigrant classification from that of a student under section 101(a)(15)(M)(i) to that described in section 101(a)(15)(H).* A district director shall deny an application for change of nonimmigrant classification from that of an M-1 student to that of an alien temporary worker under section 101(a)(15)(H) of the Act if the education or training which the student received while an M-1 student enables the student to meet the qualifications for temporary worker classification under section 101(a)(15)(H) of the Act.

[36 FR 9001, May 18, 1971, as amended at 48 FR 14592, Apr. 5, 1983]

§ 248.2 Ineligible classes.

The following categories of aliens are not eligible to change their nonimmigrant status under section 248 of the Act:

(a) Any alien in immediate and continuous transit through the United States without a visa;

(b) Any alien classified as a nonimmigrant under section 101(a)(15) (C), (D), or (K) of the Act;

(c) Any alien admitted as a nonimmigrant under section 101(a)(15)(J) of the Act, or who acquired such status after admission in order to receive graduate medical education or training, whether or not the alien was subject to, received a waiver of, or fulfilled the two-year foreign residence requirement of section 212(e) of the Act; and

(d) Any alien classified as a nonimmigrant under section 101(a)(15)(J) of the Act (other than an alien described in paragraph (c) of this section) who is subject to the foreign residence requirement of section 212(e) of the Act and who has not received a waiver of the residence requirement, except when the alien applies to change to a classification under section 101(a)(15)(A) or (G) of the Act.

[47 FR 44238, Oct. 7, 1982, as amended at 48 FR 41017, Sept. 13, 1983]

§ 248.3 Application.

(a) *General.* A nonimmigrant alien who seeks to change the visa classification under which he or she was admitted to the United States shall apply for a change of nonimmigrant classification on Form I-506, Applicant for Change of Nonimmigrant Status. The applicant shall submit documentary evidence establishing eligibility for the change of classification being requested. Form I-506 must be filed with the district director having jurisdiction over the applicant's place of temporary residence in the United States, except for change of status to classification under section 101(a)(15) (H) or (L) of the Act.

(b) *Change to H or L.* An applicant for change of nonimmigrant classification to H or L shall submit Form I-506 accompanied by either Form I-129B, Petition to Classify Nonimmigrant as Temporary Worker or Trainee, or a copy of the Form I-171C, Notice of Approval or Extension of Nonimmigrant Visa Petition of H or L Alien, to the district director having jurisdiction over the place of employment. If the services will be performed or the training will be received in more than one location in the United States, the petition and application shall be filed with a Service office having jurisdiction over at least one of those areas. In the case of a "blanket L" applicant, the I-506 may be filed with the district director having jurisdiction over at least one of the areas where the services will be performed, or may be filed with the district director where the blanket petition was filed.

(c) *Application and fee not required.* For a change of nonimmigrant classification to a classification under section 101(a)(15)(A) or 101(a)(15)(G) of the Act, the Department of State must send a letter to the district director. For all other changes of nonimmigrant classification as described below, the applicant must submit a letter to the district director requesting the change of nonimmigrant classification. Neither an application nor a fee is required for the following changes of nonimmigrant classification:

(1) A change to classification under section 101(a)(15) (A) or (G) of the Act.

(2) A change to classification under sections 101(a)(15) (A) or (G) of the Act for an immediate family member, as defined in 22 CFR 41.1, of a principal alien whose status has been changed to such a classification.

(3) A change to the appropriate classification for the nonimmigrant spouse or child of an alien whose status has been changed to a classification under sections 101(a)(15) (E), (F), (H), (I), (J), (L), or (M) of the Act.

(4) A change of classification from that of a visitor for pleasure under section 101(a)(15)(B) of the Act to that of a visitor for business under the same section.

(5) A change of classification from that of a student under section 101(a)(15)(F)(i) of the Act to that of an accompanying spouse or minor child under section 101(a)(15)(F)(ii) of the Act or vice versa.

(6) A change from any classification within section 101(a)(15)(H) of the Act to any other classification within section 101(a)(15)(H) of the Act provided that the requisite Form I-129B visa petition has been filed and approved.

(7) A change from classification as a participant under section 101(a)(15)(J) of the Act to classification as an accompanying spouse or minor child under that section or vice versa.

(8) A change from classification as an intra-company transferee under section 101(a)(15)(L) of the Act to classification as an accompanying spouse or minor child under that section or vice versa.

(9) A change of classification from that of a student under section 101(a)(15)(M)(i) of the Act to that of an accompanying spouse or minor child under section 101(a)(15)(M)(ii) of the Act or vice versa.

(d) *Fee not required.* No fee is required for a request for change to exchange alien classification under section 101(a)(15)(J) of the Act made by an agency of the United States Government. In such a case, the agency may submit Form IAP-66, Certificate of Eligibility for Exchange-Visitor (J-1) Status, together with its request in lieu of Form I-506, Application for Change of Nonimmigrant Status.

(e) *Change of classification not required.* The following do not need to request a change of classification:

(1) An alien classified as a visitor for business under section 101(a)(15)(B) of the Act who intends to remain in the United States temporarily as a visitor for pleasure during the period of authorized admission; or

(2) An alien classified under sections 101(a)(15)(A) or 101(a)(15)(G) of the Act as a member of the immediate family of a principal alien classified under the same section, or an alien classified under section 101(a)(15) (E), (F), (H), (I), (J), (L), or (M) of the Act as the spouse or child who accompanied or followed to join a principal alien who is classified under the same

section, to attend school in the United States, as long as the immediate family member, spouse or child continues to be qualified for and maintains the status under which the family member, spouse or child is classified.

(f) *Approval of application.* If the application is granted, the applicant shall be notified of the decision and granted a new period of time to remain in the United States without the requirement of filing a separate application and paying a separate fee for an extension of stay. The applicant's nonimmigrant status under his new classification shall be subject to the terms and conditions applicable generally to such classification and to such other additional terms and conditions, including exaction of bond, which the district director deems appropriate to the case.

(g) *Denial of application.* When the application is denied, the applicant shall be notified of the decision and the reasons for the denial. There is no appeal from the denial of the application under this chapter.

[36 FR 9001, May 18, 1971, as amended at 48 FR 14593, Apr. 5, 1983; 48 FR 41017, Sept. 13, 1983; 48 FR 4476, Sept. 30, 1983; 50 FR 25697, June 21, 1985]

PART 249—CREATION OF RECORDS OF LAWFUL ADMISSION FOR PERMANENT RESIDENCE

Sec.
249.1 Waiver of inadmissibility.
249.2 Application.
249.3 Reopening and reconsideration.

AUTHORITY: Secs. 103, 212, 249, 66 Stat. 173, 182, as amended, 219, as amended; 8 U.S.C. 1103, 1182, 1259.

§ 249.1 Waiver of inadmissibility.

In conjunction with an application under section 249 of the Act, an otherwise eligible alien who is inadmissible under paragraph (9), (10), or (12) of section 212(a) of the Act or so much of paragraph (23) of section 212(a) of the Act as relates to a single offense of simple possession of 30 grams or less of marihuana may request a waiver of such ground of inadmissibility under section 212(h) of the Act. Any alien within the classes described in subparagraphs (B) through (H) of section 212(a)(28) of the Act may apply for the benefits of section 212(a)(28)(I)(ii) in conjunction with an application under section 249 of the Act.

[47 FR 44238, Oct. 7, 1982]

§ 249.2 Application.

An application by an alien after he has been served with an order to show cause or warrant of arrest shall be made and considered only in proceedings under Part 242 of this chapter. In any other case, an alien who believes that he meets the eligibility requirements of section 249 of the Act shall apply to the district director having jurisdiction over his place of residence. The application shall be made on Form I-485, and shall be accompanied by executed Form G-325A, which shall be considered part of the application. The application shall also be accompanied by documentary evidence establishing continuous residence in the United States prior to June 30, 1948, or since entry and prior to July 1, 1924. Original documents shall be presented but may later be returned provided copies are furnished with the originals. Documentary evidence may include any records of official or personal transactions or recordings of events occurring during the period of claimed residence. Affidavits of credible witnesses may also be accepted. Women unemployed since marriage and unable to furnish evidence in their own names may furnish evidence in the names of parents or other persons with whom they have been living if affidavits of the parents or other persons are submitted attesting to the residence. The applicant shall be notified of the decision and if the application is denied of the reasons therefor. If the application is granted, a Form I-551, showing that the applicant has acquired the status of an alien lawfully admitted for permanent residence, shall not be issued until the applicant surrenders any other document in his possession evidencing compliance with the alien-registration requirements of former or existing law. No appeal shall lie from the denial of an application by the district director but such denial shall be without prejudice to the alien's right to renew an application in proceedings under Part 242 of this chapter.

[29 FR 12114, Aug. 11, 1964, as amended at 31 FR 15235, Dec. 6, 1966; 45 FR 32657, May 19, 1980]

§ 249.3 Reopening and reconsideration.

An applicant who alleged entry and residence since prior to July 1, 1924, but in whose case a record was created as of the date of approval of the application because evidence of continuous residence prior to July 1, 1924, was not submitted, may have his case reopened and reconsidered pursuant to § 103.5 of this chapter. Upon the submission of satisfactory evidence, a record of admission as of the date of alleged entry may be created.

[29 FR 11494, Aug. 11, 1964]

PART 250—REMOVAL OF ALIENS WHO HAVE FALLEN INTO DISTRESS

Sec.
250.1 Application.
250.2 Removal authorization.

AUTHORITY: Secs. 103, 250, 66 Stat. 173, 219; 8 U.S.C. 1103, 1260.

§ 250.1 Application.

Application for removal shall be made on Form I-243. No appeal shall lie from the decision of the district director.

[22 FR 9802, Dec. 6, 1957]

§ 250.2 Removal authorization.

If the district director grants the application he shall issue an authorization for the alien's removal on Form I-202. Upon issuance of the authorization, or as soon thereafter as practicable, the alien may be removed from the United States at government expense.

[22 FR 9802, Dec. 6, 1957]

PART 251—ARRIVAL MANIFESTS AND LISTS: SUPPORTING DOCUMENTS

Sec.
251.1 Arrival manifests and lists.
251.2 Notification of illegal landings.
251.3 Departure manifests and lists for vessels.
251.4 Departure manifests and lists for aircraft.
251.5 Exemptions for private vessels and aircraft.

AUTHORITY: Secs. 103, 212, 231, 251, 252, 66 Stat. 173, 182, as amended, 195, 219, 220; 8 U.S.C. 1103, 1182, 1221, 1281, 1282.

§ 251.1 Arrival manifests and lists.

(a) *Vessels.* The master or agent of every vessel arriving in the United States from a foreign place or from an outlying possession of the United States shall present to the immigration officer at the port where the immigration inspection is performed a manifest of all crewmembers on board on Form I-418 in accordance with the instructions contained thereon. A manifest shall not be required for crewmen aboard a vessel of United States, Canadian, or British registry engaged solely in traffic on the Great Lakes, or the St. Lawrence River, and connecting waterways herewith designated as a Great Lakes vessel, except crewmen of other than United States, Canadian, or British citizenship and, after submission of a manifest on the first voyage of a calendar year, a manifest shall not be required on subsequent arrivals unless there is employed on the vessel at the time of such arrival an alien crewman of other than United States, British, or Canadian citizenship who was not aboard and listed on the occasion of the submission of the last prior manifest. The master or agent of a vessel that only bunkers at a United States port pursuant to § 235.1(d)(7) of this part must annotate Form I-418 to indicate the time, date and place of bunkering.

(b) *Aircraft.* The captain or agent of every aircraft arriving in the United States from a foreign place or from an outlying possession of the United States, except an aircraft arriving in the United States directly from Canada on a flight originating in that country, shall present to the immigration officer at the port where the inspection is performed a manifest on the Bureau of Customs Form 7507 or on the International Civil Aviation Organization's General Declaration of all the alien crewmembers on board, including alien crewmembers who are returning to the United States after taking an aircraft of the same line from the United States to a foreign place or alien crewmembers who are entering the United States as passengers solely for the purpose of taking an aircraft of the same line from the United States to a foreign port. The captain or agent of an aircraft that only refuels at the United States port pursuant to § 235.1(d)(7) of this part must annotate the manifest to indicate the time, date and place of refueling. The surname, given name, and middle initial of each alien crewman listed also shall be shown on the manifest. In addition, the captain or agent of the aircraft shall indicate in writing immediately below the name of the last alien listed on the Form or Declaration, the number of United States citizen crewmen on board, if any. If there are no alien crewmen aboard, the captain or agent shall indicate in writing on the Form or Declaration the number of United States citizen crewmen, followed by a statement that there are no alien crewmen.

(c) *Additional documents.* The master, captain, or agent shall prepare as a part of the manifest, when one is required for presentation to an immigration officer, a completely executed set of Forms I-95 for each alien crewman on board, except: (1) An alien immigrant crewman in possession of a valid immigrant visa, reentry permit, or alien registration receipt card on Form I-151 or I-551; (2) a Canadian or British citizen crewman serving on a vessel plying solely between Canada and the United States; or (3) a crewman seeking conditional landing privileges under section 252(a)(1) of the Act who is in possession of an unmutilated alien crewman landing permit and identification card (Form I-184) or an unmutilated conditional landing permit (Form I-95) with space for additional endorsements previously issued to him as a member of the crew of the same vessel or an aircraft of the same line on his last prior arrival in the United States, following which he departed from the United States as a member of the crew of the same vessel or an aircraft of the same line.

(d) *Notations on arrival manifests.* Upon completion of the examination of each crewman listed on the Form I-418 presented by the master or agent of an arriving vessel, the examining immigration officer shall place one of the following symbols in column (5) of the Form I-418 opposite the name of the crewman: "USC" for a crewman admitted as a United States citizen; "RP" or "ARC" to indicate respectively the presentation of a reentry permit or an alien registration receipt card, Form I-151 or I-551, for a crewman admitted as a lawful permanent resident; "D-1" for an alien crewman granted a conditional landing permit under section 252(a)(1) of the Act; "D-2" for an alien crewman granted a conditional landing permit under section 252(a)(2) of the Act; "Parolee" for an alien crewman paroled pursuant to section 212(d)(5) of the Act; and "Refused" for an alien crewman whose request for a landing permit has been refused. The examining immigration officer shall sign his name, title and the date of the inspection following the last entry in column (5) of the Form I-418 when the examination of the crew is completed. The master of the vessel shall be furnished Form I-410 as a receipt for the arrival manifest, Form I-418, and the immigration officer shall list on that form the names of all crewmen who have been refused conditional landing permits.

[30 FR 6777, May 19, 1965, as amended at 32 FR 9632, July 4, 1967; 34 FR 12560, Aug. 1, 1969; 34 FR 19799, Dec. 18, 1969; 45 FR 32658, May 19, 1980; 46 FR 43827, Sept. 1, 1981]

§ 251.2 Notification of illegal landings.

As soon as discovered, the master or agent of any vessel from which an alien crewman has illegally landed or deserted in the United States shall inform the immigration officer in charge of the port where the illegal landing or desertion occurred, in writing, of the name, nationality, passport number and, if known, the personal description, circumstances and time of such illegal landing or desertion of such alien crewman, and furnish any other information and documents which might aid in his apprehension, including any passport surrendered pursuant to § 252.1(d) of this chapter. Failure to file notice of illegal landing or desertion and to furnish any surrendered passport within 24 hours of the time of such landing or desertion becomes known shall be regarded as lack of compliance with section 251(d) of the Act.

[28 FR 209, Jan. 9, 1963]

§ 251.3 Departure manifests and lists for vessels.

(a) *Form I-418, Crew List.* The master or agent of every vessel departing from the United States shall submit to the immigration officer at the port from which such vessel is to depart directly to some foreign place or outlying possession of the United States, except when a manifest is not required pursuant to § 251.1(a), a single Form I-418, Crew List, completed in accordance with the instructions contained herein. Every item in the heading of the Form I-418 must be completed and the following endorsement shall be placed on the first line of the form: "Arrival Crew List, Form I-418, filed at (show United States port of entry)." Submission of a Form I-418 which lacks that endorsement or which lacks other essential information shall be regarded as lack of compliance with section 251(c) of the Act.

(b) *Added crewmen.* Under a heading "Added Crewmen," list the names of all nonresident alien crewmen who were not members of the crew and manifested on Form I-418 as such on the occasion of the vessel's last arrival in the United States and attach for each name on the list the Form I-95 or Form I-94 given to the alien crewman when he last arrived in the United States. If that form is unavailable, a new Form I-95 shall be prepared and attached to the Form I-418.

(c) *Separated crewman.* Under a heading "Separated Crewmen," list the names of all alien crewmen, other than alien permanent residents of the United States, who were listed on the arrival Form I-418, as members of the crew on the occasion of the vessel's last arrival in the United States but who for any reason are not departing with the vessel, and for each such separated crewman show his nationality, passport number, specific port and date of separation, and the reasons for failure to depart. If an application to pay off or discharge an alien crewman has been granted subsequent to the vessel's arrival, the triplicate copy of the relating Form I-408 shall be attached to the Form I-418. The list required by paragraph (b) of this section and this paragraph may be incorporated in a single Form I-418, if space permits. The required lists need not be submitted for Canadian or British citizen crewmen of Great Lakes vessels.

(d) *No changes in crew.* When there are no added and separated crewmen as described in this section, the Form I-418 shall be endorsed with the notation "No changes in nonresident alien crew upon departure."

[30 FR 6777, May 19, 1965, as amended at 33 FR 17137, Nov. 19, 1968]

§ 251.4 Departure manifests and lists for aircraft.

(a) *Bureau of Customs Form 7507 or International Civil Aviation Organization's General Declaration.* The captain or agent of every aircraft departing from the United States for a foreign place or an outlying possession of the United States, except an aircraft departing from the United States directly to Canada on a flight terminating in that country, shall submit to the immigration officer at the port from which such aircraft is to depart on the Bureau of Customs Form 7507 or on the International Civil Aviation Organization's General Declaration a list of all alien crewmen on board, including alien crewmen who arrived in the United States as crewmen on an aircraft of the same line and who are departing as passengers. The surname, given name, and middle initial of each such alien crewman listed shall be shown. In addition, the captain or agent of the aircraft shall indicate in writing immediately below the name of the last alien listed on such form or declaration, the number of U.S. citizen crewmen on board, if any. If there are no alien crewmen aboard, the captain or agent shall indicate in writing on the form or declaration the number of U.S. citizen crewmen, followed by a statement that there are no alien crewmen.

(b) *Notification of changes in employment for aircraft.* The agent of the air transportation line shall immediately notify in writing the nearest immigration office of the termination of employment in the United States of each alien employee of the line furnishing the name, birthdate, birthplace, nationality, passport number, and other available information concerning such alien. The procedure to follow in obtaining permission to pay off or discharge an alien crewman in the United States after initial immigration inspection, other than an alien lawfully admitted for permanent residence, is set forth in § 252.1(h) of this chapter.

[30 FR 6777, May 19, 1965, as amended at 33 FR 17137, Nov. 19, 1968; 34 FR 12561, Aug. 1, 1969]

§ 251.5 Exemptions for private vessels and aircraft.

The provisions of this part relating to submission of arrival and departure manifests and lists shall not apply to a private vessel or a private aircraft not engaged directly or indirectly in the carriage of persons or cargo for hire.

[32 FR 9632, July 4, 1967]

PART 252—LANDING OF ALIEN CREWMEN

Sec.
252.1 Examination of crewmen.
252.2 Revocation of conditional landing permits; deportation.
252.3 Great Lakes vessels and tugboats arriving in the United States from Canada; special procedures.
252.4 Permanent landing permit and identification card.
252.5 Special procedures for deserters from Spanish or Greek ships of war.

AUTHORITY: Secs. 103, 214, 248, 251, 252, 66 Stat. 173, 189, 218, 219, 220; 8 U.S.C. 1103, 1184, 1258, 1281, 1282.

§ 252.1 Examination of crewmen.

(a) *Detention prior to examination.* All persons employed in any capacity on board any vessel or aircraft arriving in the United States shall be detained on board the vessel or at the airport of arrival by the master or agent of such vessel or aircraft until admitted or otherwise permitted to land by an officer of the Service.

(b) *Classes of aliens subject to examination under this part.* The examination of every alien crewman arriving in the United States shall be in accordance with this part and not otherwise except that the following classes of persons employed on vessels or aircraft shall be examined in accordance with the provisions of Parts 235, 236, and 237 of this chapter: (1) Aliens in possession of an immigrant visa, reentry permit, or a Form I-151 alien registration receipt card, applying for admission as immigrants; (2) Canadian or British citizen crewmen serving on vessels plying solely between Canada and the United States; or (3) Canadian or British citizen crewmen of aircraft arriving in a State of the United States directly from Canada on flights originating in that country. The crew of a vessel arriving at a United States port which may not require inspection by or clearance from the Bureau of Customs is, nevertheless, subject to examination under this part; however, the master of such a vessel, is not required to present Form I-95 for any crewman who is not an applicant for a conditional landing permit.

(c) *Requirements for admission.* Every alien crewman applying for landing privileges in the United States must make his application in person before an immigration officer, present whatever documents are required, be photographed and fingerprinted as the district director may require, and establish to the satisfaction of the immigration officer that he is not subject to exclusion under any provision of the law and is entitled clearly and beyond doubt to landing privileges in the United States.

(d) *Authorization to land.* The immigration officer in his discretion may grant an alien crewman authorization to land temporarily in the United States for: (1) Shore leave purposes during the period of time the vessel or aircraft is in the port of arrival or other ports in the United States to which it proceeds directly without touching at a foreign port or place, not exceeding 29 days in the aggregate, if the immigration officer is satisfied that the crewman intends to depart on the vessel on which he arrived or on another aircraft of the same transportation line, and the crewman's passport is surrendered for safe keeping to the master of the arriving vessel, or (2) the purpose of departing from the United States as a crewman on a vessel other than the one on which he arrived, or departing as a passenger by means of other transportation, within a period of 29 days, if the immigration officer is satisfied that the crewman intends to depart in that manner, that definite arrangements for such departure have been made, and the immigration officer has consented to the pay off or discharge of the crewman from the vessel on which he arrived. A crewman granted a conditional permit to land under section 252(a)(1) of the Act and paragraph (d)(1) of this section is required to depart with his vessel from its port of arrival and from each other port in the United States to which it thereafter proceeds coastwise without touching at a foreign port or place; however, he may rejoin his vessel at another port in the United States before it touches at a foreign port or place if he has advance written permission from the master or agent to do so.

(e) *Conditional permits to land.* Unless the crewman is in possession of Form I-184 and is landed under paragraph (d)(1) of this section, the immigration officer shall give to each alien nonimmigrant crewman permitted to land a copy of the Form I-95 presented by the crewman, endorsed to show the date and place of admission and the type of conditional landing permit.

(f) *Change of status.* An alien nonimmigrant crewman landed pursuant to the provisions of this part shall be ineligible for any extension of stay or for a change of nonimmigrant classification under Part 248 of this chapter. A crewman admitted under paragraph (d)(1) of this section may, if still maintaining status, apply for a conditional landing permit under paragraph (d)(2) of this section. The application shall not be approved unless an application on Form I-408, filed pursuant to paragraph (h) of this section, has been approved authorizing the master or agent of the vessel on which the crewman arrived to pay off or discharge the crewman and unless evidence is presented by the master or agent of the vessel to which the crewman will be transferred that a specified position on that vessel has been authorized for him or that satisfactory arrangements have been completed for the repatriation of the alien crewman. If the application is approved, the crewman shall be given a new Form I-95 endorsed to show landing authorized under paragraph (d)(2) of this section for the period necessary to accomplish his scheduled reshipment, which shall not exceed 29 days from the date of his landing, upon surrendering any conditional landing permit previously issued to him on Form I-95.

(g) *Refusal of conditional landing permit.* When an alien crewman is refused a conditional landing permit for any reason, the Form I-95 presented by him at time of examination shall be endorsed "Permission to land temporarily at all U.S. ports is refused" and the Form I-95 shall be given to the master or agent of the vessel or aircraft and, in the case of vessels, the alien crewman's name shall be listed on the Form I-410 delivered to the master of the vessel upon completion of the examination of the crew. If an alien crewman who has been refused a conditional landing permit is in possession of Form I-184, the Form I-184 shall be lifted by the examining immigration officer and, except in the case of an alien crewman who is refused a conditional landing permit solely because he is not in possession of a valid passport or visa, the Form I-184 shall be voided. In the case of an alien crewman refused a conditional landing permit because he is not in possession of a valid passport or visa, the Form I-184 shall be delivered to the master or agent of the vessel with instructions to return it to the alien crewman after the vessel has departed from the United States.

(h) *Authorization to pay off or discharge an alien crewman.* Application to pay off or discharge an alien crewman, except an alien lawfully admitted for permanent residence, shall be made by the owner, agent, consignee, charterer, master, or commanding officer of the vessel or aircraft on which the alien crewman arrived on Form I-408 filed with the immigration officer having jurisdiction over the area in which the vessel or aircraft is located at the time of application. The applicant shall be notified of the decision, and, if the application is denied, of the reasons therefor. There shall be no appeal from the denial of an application on Form I-408.

[23 FR 2788, Apr. 26, 1958, as amended at 27 FR 11875, Dec. 1, 1962; 29 FR 13243, Sept. 24, 1964; 29 FR 14432, Oct. 21, 1964; 32 FR 9633, July 4, 1967; 33 FR 9332, June 26, 1968; 33 FR 17137, Nov. 19, 1968]

§ 252.2 Revocation of conditional landing permits; deportation.

An alien permitted to land conditionally under § 252.1(d)(1) may, within the period of time for which he was permitted to land, be taken into custody by any immigration officer without a warrant of arrest and be transferred to the vessel upon which he arrived in the United States, if such vessel is in any port of the United States and has not been in a foreign port or place since the crewman was issued his condition landing permit, upon a determination by the immigration officer that the alien crewman is not a bona fide crewman or that he does not intend to depart on the vessel on which he arrived in the United States. The conditional landing permit of such an alien crewman shall be taken up and revoked by the immigration officer, and a notice on Form I-259 to detain and deport such alien crewman shall be served on the agent for the vessel, and if they are available, on the owner and the master or commanding officer of the vessel. Form I-99 shall be served on the crewman when he is taken into custody or as soon as practicable thereafter. On the written request of the master of the vessel, the crewman may be detained and deported, both at the expense of the transportation line on whose vessel he arrived in the United States, other than on the vessel on which he arrived in the United States, if detention or deportation on such latter vessel is impractical.

[29 FR 15253, Nov. 13, 1964]

§ 252.3 Great Lakes vessels and tugboats arriving in the United States from Canada; special procedures.

(a) *United States vessels and tugboats.* An immigration examination shall not be required of any crewman aboard a Great Lakes vessel of United States registry or a tugboat of United States registry arriving from Canada at a port of the United States who has been examined and admitted by an immigration officer as a member of the crew of the same vessel or tugboat or of any other vessel or tugboat of the same company during the current calendar year.

(b) *Canadian or British vessels or tugboats.* An immigration examination shall not be required of any crewman aboard a Great Lakes vessel of Canadian or British registry or a tugboat of Canadian or British registry arriving from Canada at a port of the United States for a period of less than 29 days who has been examined and admitted by an immigration officer as a member of the crew of the same vessel or tugboat or of any other vessel or tugboat of the same company during the current calendar year, and is either a British or Canadian citizen or is in possession of a valid Form I-95 previously issued to him as a member of the crew of the same vessel or tugboat or of any other vessel or tugboat of the same company, and does not request or require landing privileges in the United States beyond the time the vessel or tugboat will be in port, and will depart with the vessel or tugboat to Canada.

[41 FR 24700, June 18, 1976]

§ 252.4 Permanent landing permit and identification card.

A Form I-184 is valid until revoked. It shall be revoked when an immigration officer finds that the crewman is in the United States in willful violation of the terms and conditions of his admission, or that he is inadmissible to the United States. On revocation, the Form I-184 shall be surrendered to an immigration officer. No appeal shall lie from the revocation of Form I-184.

[43 FR 37174, Aug. 22, 1978]

§ 252.5 Special procedures for deserters from Spanish or Greek ships of war.

(a) *General.* Under E.O. 11267 of January 19, 1966 (31 FR 807) and 28 CFR 0.109, and E.O. 11300 of August 17, 1966, (31 FR 11009), and 28 CFR 0.110, the Commissioner and immigration officers (as defined in § 103.1(i) of this chapter) are designated as "competent national authorities" on the part of the United States within the meaning of Article XXIV of the 1903 Treaty of Friendship and General Relations between the United States and Spain (33 Stat. 2105, 2117), and "local authorities" and "competent officers" on the part of the United States within the meaning of Article XIII of the Convention between the United States and Greece (33 Stat. 2122, 2131).

(b) *Application for restoration.* On application of a Consul General, Consul, Vice-Consul, or Consular-Agent of the Spanish or Greek Government, made in writing pursuant to Article XXIV of the treaty, or Article XIII of the Convention, respectively, stipulating for the restoration of crewmen deserting, stating that the person named therein has deserted from a ship of war of that government, while in any port of the United States, and on proof by the exhibition of the register, crew list, or official documents of the vessel, or a copy or extract therefrom, duly certified, that the person named belonged, at the time of desertion, to the crew of such vessel, such person shall be taken into custody by any immigration officer without a warrant of arrest. Written notification of charges shall be served on the individual when he is taken into custody or as soon as practical thereafter.

(c) *Examination.* Within a reasonable period of time after the arrest, the individual shall be accorded an examination by the district director, acting district director, or the deputy district director having jurisdiction over the place of arrest. He shall be informed that he may have the assistance of or be represented by a counsel or representative of his choice qualified under Part 292 of this chapter without expense to the Government, and that he may present such evidence in his behalf as may be relevant to this proceeding. If, upon the completion of such examination, it is determined that: (1) The individual sought by the Spanish or Greek authorities had deserted from a Spanish or Greek ship of war in a United States port; (2) the individual actually arrested and detained is the person sought; (3) this individual is not a citizen of the United States; and (4) this individual had not previously been arrested for the same cause and set at liberty because he had been detained for more than 3 months, or more than 2 months in the case of a deserter from a Greek ship of war, from the day of his arrest without the Spanish or Greek authorities having found an opportunity to send him home, the individual shall be served with a copy of the findings, from which no appeal shall lie, and be surrendered forthwith to the Spanish or Greek authorities if they are prepared to remove him from the United States. On written request of the Spanish or Greek authorities, the individual shall be detained, at their expense, for a period not exceeding 3 months or 2 months, respectively, from the day of arrest to afford opportunity to arrange for his departure from the United States.

(d) *Timely departure not effected.* If the Spanish authorities delay in sending the individual home for more than 3 months, or if the Greek authorities delay in sending the individual home for more than 2 months, from the day of his arrest, the individual shall be dealt with as any other alien unlawfully in the United States under the deportation provisions of the Immigration and Nationality Act, as amended.

(e) *Commission of crime.* If the individual has committed any crime or offense in the United States, he shall not be placed at the disposal of the consul until after the proper tribunal having jurisdiction in his case shall have pronounced sentence, and such sentence shall have been executed.

[31 FR 12774, Sept. 30, 1966]

PART 253—PAROLE OF ALIEN CREWMEN

Sec.
253.1 Parole.
253.2 Termination of parole.

AUTHORITY: Secs. 103, 212, 252, 253, 255, 66 Stat. 173, 182, as amended, 220, 221, 222; 8 U.S.C. 1103, 1182, 1282, 1283, 1285.

§ 253.1 Parole.

(a) *General.* When a crewman is paroled into the United States pursuant to the provisions of this part under the provisions of section 212(d)(5) of the Act, he shall be given Form I-94, reflecting the terms of parole. A notice on Form I-259 shall be served upon the agent, and, if available, upon the owner and master or commanding officer of the vessel or aircraft, which shall specify the purpose of the parole and the conditions under which the alien crewman is paroled into the United States. The Form I-259 shall also specify the Service office to which the alien crewman is to be presented for inspection upon termination of the parole. The guarantee of payment for medical and other related expenses required by section 253 of the Act shall be executed by the owner, agent, consignee, commanding officer or master on Form I-510.

(b) *Afflicted crewman.* Any alien crewman afflicted with feeblemindedness, insanity, epilepsy, tuberculosis in any form, leprosy, or any dangerous contagious disease, or an alien crewman suspected of being so afflicted shall upon arrival at the first port of call in the United States, be paroled to the medical institution designated by the district director in whose district the port is located, in the custody (other than during the period of time he is in such medical institution) of the agent of the vessel or aircraft on which such alien arrived in the United States and at the expense of the transportation line for a period initially not to exceed thirty days, for treatment and observation, under the provisions of section 212(d)(5) of the Act. Unless the Public Health Surgeon at the first port certifies that such parole be effected immediately for emergent reasons, the district director may defer execution of parole to a subsequent port of the United States to which the vessel or aircraft will proceed, if facilities not readily available at the first port are readily available at such subsequent port of call. Notice to remove an afflicted alien crewman shall be served by the examining immigration officer upon the master or agent of the vessel or aircraft on Form I-259 and shall specify the date when and the place to which such alien crewman shall be removed and the reasons therefor.

(c) *Disabled crewman.* Any alien crewman who becomes disabled in any port of the United States, whom the master or agent of the vessel or aircraft is obliged under foreign law to return to another country, may be paroled into the United States under the provisions of section 212(d)(5) of the Act for the period of time and under the conditions set by the district director in whose district the port is located, in the custody of the agent of the vessel or aircraft for the purpose of passing through the United States and transferring to another vessel or aircraft for departure to such foreign country, by the most direct and expeditious route.

(d) *Shipwrecked or castaway seamen or airmen.* A shipwrecked or castaway alien seaman or airman who is rescued by or transferred at sea to a vessel or aircraft destined directly for the United States and who is brought to the United States on such vessel or aircraft other than as a member of its crew shall be paroled into the United States under the provisions of section 212(d)(5) of the Act for the period of time and under the conditions set by the district director in whose district the port is located, in the custody of the appropriate foreign consul or the agent of the aircraft or vessel which was wrecked or from which such seaman or airman was removed, for the purpose of treatment or observation in a hospital, if such is required, and for departure to the appropriate foreign country by the most direct and expeditious route.

(e) *Medical treatment or observation.* Any alien crewman denied a conditional landing permit or whose conditional landing permit issued under § 252.1(d)(1) of this chapter is revoked may, upon the request of the master or agent, be paroled into the United States under the provisions of section 212(d)(5) of the Act in the custody of the agent of the vessel or aircraft and at the expense of the transportation line for medical treatment or observation.

(f) *Crewman alleging persecution.* Any alien crewman refused a conditional landing permit or whose conditional landing permit has been revoked who alleges that he cannot return to a Communist, Communist-dominated or Communist-occupied country because of fear of persecution in that country on account of race, religion, or political opinion shall be removed from the vessel or aircraft for interrogation. Following the interrogation, the district director having jurisdiction over the area where the alien crewman is located may in his discretion authorize parole of the alien crewman into the United States under the provisions of section 212(d)(5) of the Act. If parole is not authorized, the crewman shall be returned to the vessel or aircraft on which he arrived in the United States.

(g) *Other crewmen.* In the discretion of the district director, any alien crewman not within the purview of paragraphs (b) through (f) of this section may for other emergent reasons or for reasons deemed strictly in the public interest be paroled into the United States under the provisions of section 212(d)(5) of the Act for the period of time and under the conditions set by the district director having jurisdiction over the area where the alien crewman is located.

[22 FR 9804, Dec. 6, 1957, as amended at 26 FR 11797, Dec. 8, 1961; 32 FR 4341, March 22, 1967; 32 FR 9633, July 4, 1967]

§ 253.2 Termination of parole.

(a) *General.* At the expiration of the period of parole authorized by the district director, or when the purpose of the parole has been served, whichever is earlier, the agent upon whom the relating Form I-259 was served as provided in § 253.1, shall present the alien crewman for inspection to an immigration officer at the Service office specified in the Form I-259. If the agent cannot present the alien crewman, the agent shall immediately submit a report of the reasons therefor to the district director. The district director shall take such further action as the circumstances may require. If the vessel or aircraft on which the alien crewman arrived in the United States is still in the United States when he is presented for inspection, he shall be treated as an applicant for a conditional landing permit and his case shall be dealt with in the same manner as any other applicant for a conditional landing permit. If the vessel or aircraft on which the alien crewman arrived in the United States departed before he was presented for inspection, the agent shall be directed by means of written notice on Form I-259 to arrange for the removal of the alien crewman from the United States, and if such alien crewman thereafter departs voluntarily from the United States within the time specified by the district director, such departure shall not be considered a deportation within the meaning of this section.

(b) *Revocation of parole.* When an immigration officer has reason to believe that an alien crewman paroled into the United States pursuant to the provisions of § 253.1 has violated the conditions of parole, the immigration officer may take such alien crewman into custody without a warrant of arrest. Following such action, the alien crewman shall be accorded, without undue delay, an examination by another immigration officer. If it is determined on the basis of such examination that the individual detained is an alien crewman who was paroled into the United States pursuant to the provisions of § 253.1 and that he has violated the conditions of the parole or has remained in the United States beyond the period authorized by the district director, the district director shall cause to be served upon the alien crewman a written notice that his parole has been revoked, setting forth the reasons for such action. If the vessel or aircraft upon which the alien crewman arrived in the United States is still in the United States, the alien crewman shall be delivered to that vessel or aircraft and Form I-259 shall be served upon the master or commanding officer of the vessel or aircraft directing that the alien crewman be detained on board the vessel or aircraft and deported from the United States. A copy of Form I-259 shall also be served on the agent for the vessel or aircraft. If the vessel or aircraft upon which the alien crewman arrived in the United States has departed from the United States, the agent or owner of the vessel or aircraft shall be directed by means of a notice on Form I-259 to effect the deportation of the alien crewman from the United States. Pending deportation, the alien crewman shall be continued in custody, unless the district director authorizes his release on parole under such conditions, including the posting of a suitable bond, as the district director may prescribe.

[32 FR 4342, Mar. 22, 1967]

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

Sec.
264.1 Registration and fingerprinting.
264.2 Application for creation of record of lawful permanent residence and alien Registration Receipt Card Form I-551.

§ 264.1 Registration and fingerprinting.

(a) *Prescribed registration forms.* The following forms are prescribed as registration forms:

Form No. and Class

I-67. Inspection Record—Hungarian refugees (Act of July 25, 1958).

I-94. Arrival-Departure Record—Aliens admitted as nonimmigrants; aliens paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act; aliens whose claimed entry prior to July 1, 1924, cannot be verified, they having satisfactorily established residence in the United States since prior to July 1, 1924; aliens lawfully admitted to the United States for permanent residence who have not been registered previously; aliens who are granted permission to depart without the institution of deportation proceedings or against whom deportation proceedings are being instituted.

I-95. Crewmen's Landing Permit—Crewmen arriving by vessel or aircraft.

I-175. Application for Nonresident Alien Canadian Border Crossing Card—Citizens of Canada or British subjects residing in Canada

I-181. Memorandum of Creation of Record of Lawful Permanent Residence—Aliens presumed to be lawfully admitted to the United States under 8 CFR 101.1.

I-190. Application for Nonresident Alien Mexican Border Crossing Card—Citizens of Mexico residing in Mexico.

I-485. Application for Status as Permanent Resident—Applicants under sections 245 and 249 of the Immigration and Nationality Act as amended, and section 13 of the Act of September 11, 1957.

I-485A. Application by Cuban Refugee for Permanent Residence—Applicants under section 1 of the Act of November 2, 1966.

I-590. Registration for Classification as Refugee—Escapee—Refugee-escapees paroled pursuant to section 1 of the Act of July 14, 1960.

(b) *Evidence of registration.* The following forms constitute evidence of registration:

Form No. and Class

I-90. Application by Lawful Permanent Resident Alien for Alien Registration Receipt Card, Form I-151—While application is pending, aliens whose evidence of registration has been lost, mutilated, or destroyed; aliens whose name has been changed; aliens whose evidence of registration is on a form other than Form I-151; aliens who have never received Form I-151; aliens who have surrendered Forms I-151 which are in poor condition because of improper lamination and aliens who have surrendered Form I-151 issued prior to their fourteenth birthday and who are applying for registration pursuant to section 262(b) after attaining that birthday.

I-94. Arrival-Departure Record—Aliens admitted as nonimmigrants; aliens paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act; aliens whose claimed entry prior to July 1, 1924, cannot be verified, they having satisfactorily established residence in the United States since prior to July 1, 1924; and aliens granted permission to depart without the institution of deportation proceedings.

I-95. Crewmen's Landing Permit—Crewmen arriving by vessel or aircraft.

I-102. Application by Nonimmigrant Alien for Replacement of Arrival Document—While application is pending, nonimmigrants and other aliens not in lawful permanent resident status.

I-151. Alien Registration Receipt Card—Lawful permanent residents of the United States.

I-174. Application for Crewmen's Landing Permit—Crewmen whose landing permits have been lost, mutilated, or destroyed (while application is pending).

I-184. Alien Crewman Landing Permit and Identification Card—Crewmen arriving by vessel.
I-185. Nonresident Alien Canadian Border Crossing Card—Citizens of Canada or British subjects residing in Canada.
I-186. Nonresident Alien Mexican Border Crossing Card—Citizens of Mexico residing in Mexico.
I-221. Order to Show Cause and Notice of Hearing—Aliens against whom deportation proceedings are being instituted.
I-221S. Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien—Aliens against whom deportation proceedings are being instituted.
I-551. Alien Registration Receipt Card—Lawful permanent resident of the United States.

(c) *Replacement of registration.* Any alien whose evidence of registration has been lost, mutilated, or destroyed, shall immediately apply for new evidence of registration. Application for replacement of Form I-185, Nonresident Alien Canadian Border Crossing Card, shall be made on Form I-175. Application for replacement of Form I-186, Nonresident Alien Mexican Border Crossing Card, shall be made on Form I-190. Application for replacement of Form I-94, Arrival-Departure Record, or Form I-95, Crewman's Landing Permit, shall be made on Form I-102, except that a new form I-94 may be issued in lieu of one lost, mutilated, or destroyed without application therefor, when the alien is an applicant for extension of his temporary stay or change of nonimmigrant classification. Application by an alien lawfully admitted for permanent residence for Form I-551, Alien Registration Receipt Card, in lieu of one lost, mutilated, or destroyed, or who requests issuance of such card in a name which has been changed after registration by order of any court of competent jurisdiction or by marriage, shall be made on Form I-90 accompanied by the fee required by § 103.7(b) of this chapter, two color photographs, regardless of the applicant's age, unless the requirement for such photographs has been waived by the district director in his discretion because of hardship to an applicant who is confined due to age or physical infirmity, and when issuance of Form I-551 is desired in a changed name, by appropriate documentary evidence of such change. Any Form I-151 or I-551 in the applicant's possession must also be submitted with the application. An application on Form I-90, with two color photographs but without fee, is required for issuance of Form I-551 in the case of a lawful permanent resident who surrenders evidence of registration on other than Form I-151 or I-551; who establishes that such form was never received by him; who is the holder of a Form I-151 or I-551 which is incorrect or in poor condition because of improper lamination and surrenders such form, or in the case of an alien who has attained the age of 14 and is seeking to be registered and fingerprinted pursuant to section 262(b) of the Act and who surrenders evidence of registration previously issued to him; or who is an alien commuter taking up actual permanent residence in the United States. No application or fee is required if Form I-151 or I-551 has been returned to the issuing office, by postal authorities, and is in the applicant's file. An application by an alien within the United States for replacement of evidence of registration shall be submitted to the Service office having jurisdiction over the applicant's place of residence in the United States. Prior to the issuance of Form I-551, all applicants, regardless of age, shall appear at the appropriate Immigration office for interview; placement of fingerprint, and, signature on Form I-89 unless these requirements are waived at the discretion of the district director because of confinement of age, physical infirmity, illiteracy or other compelling reasons. An alien lawfully admitted for permanent residence who is outside the United States shall submit his application for a new Form I-551 in person to the Service officer stationed outside the United States having jurisdiction over the place where the applicant is temporarily sojourning or, if physically present in the area of jurisdiction of an American consular officer where no Service officer is regularly stationed, to such consular officer. An application filed abroad will be forwarded with completed Form I-89 to the district director having jurisdiction over the alien's place of residence in the United States and, if the application is approved, Form I-551 will be transmitted to the Service officer stationed outside the United States or the American Consular Officer for delivery to the applicant. An alien who files application Form I-90 may be required to appear in person before an Immigration officer prior to adjudication of the application and be interrogated under oath concerning his eligibility for issuance of Form I-551 as evidence of his registration. In addition, the applicant may also be required to present a completed fingerprint card (Form FD-258). If the applicant is outside the United States, such interrogation may be conducted by an Immigration officer or a consular officer. The decision on an application for replacement of evidence of registration shall be made by the district director having jurisdiction over the alien's place of residence in the United States. No appeal shall lie from the decision of the district director denying the application.

(d) *Surrender of registration.* If an alien is naturalized, dies, permanently departs, or is deported from the United States, or evidence of registration is found by a person other than the one to whom such evidence was issued, the person in possession of the document shall forward it to a Service office.

(e) *Fingerprinting waiver.* (1) Fingerprinting is waived for nonimmigrant aliens admitted as foreign government officials and employees; international organization representatives, officers and employees; NATO representatives, officers and employees, and holders of diplomatic visas while they maintain such nonimmigrant status. Fingerprinting is also waived for other nonimmigrant aliens, while they maintain nonimmigrant status, who are nationals of countries which do not require fingerprinting of United States citizens temporarily residing therein.

(2) Fingerprinting is waived for every nonimmigrant alien not included in paragraph (e)(1) of this section who departs from the United States within one year of his admission, provided he maintains his nonimmigrant status during that time; each such alien not previously fingerprinted shall apply therefor at once if he remains in the United States in excess of one year.

(3) Every nonimmigrant alien not previously fingerprinted shall apply therefor at once upon his failure to maintain his nonimmigrant status.

(f) *Registration and fingerprinting of children who reach age 14.* Within 30 days after reaching the age of 14, any alien in the United States not exempt from alien registration under the act and this chapter shall present himself to a Service office for registration in accordance with section 262(b) of the Act, and for fingerprinting unless fingerprinting is waived pursuant to paragraph (e) of this section. He shall submit Form I-90 if he is a lawful permanent resident. If such alien is a lawful permanent resident of the United States and is temporarily absent from the United States when he reaches the age of 14, he shall comply with the foregoing within 30 days of his return to the United States. The alien, if a lawful permanent resident of the United States, shall surrender his prior evidence of alien registration and shall be issued Form I-551 bearing a photograph submitted by him in accordance with the instructions on Form I-90. In the case of an alien who is not a lawful permanent resident, the alien's Form I-94 or I-95 shall be noted to show that he has been registered and the date of registration.

(g) *Temporary evidence of registration.* Form I-94, appropriately endorsed, may be issued as temporary evidence of registration and lawful admission for permanent residence to a lawful permanent resident alien who is departing temporarily from the United States and has applied on Form I-90 for issuance of Form I-551, if the district director is unable to issue and deliver the Form I-551 prior to the alien's contemplated return to the United States. The alien shall surrender such Form I-94 to the Service upon receipt of Form I-551.

(h) *Copy of Form I-94.* An attorney or representative as defined in § 1.1 of this chapter who is representing an alien before the Service or the Board may make and retain, solely for information purposes, a copy of the Form I-94 (Arrival-Departure Record) issued to and in the possession of the alien. Such copy shall not be used for any other purpose.

(Secs. 103, 221, 261-265, 66 Stat. 173, 191, 223-225; 8 U.S.C. 1103, 1201, 1301-1305; sec. 8, 71 Stat. 641; 8 U.S.C. 1201a)

[25 FR 10495, Nov. 2, 1960, as amended at 26 FR 3455, Apr. 22, 1961; 30 FR 1031, Feb. 2, 1965; 30 FR 13862, Nov. 2 1965; 32 FR 9633, July 4, 1967; 33 FR 11354, Aug. 9, 1968; 35 FR 12268, July 31, 1970; 36 FR 16646, Aug. 25, 1971; 38 FR 8591, Apr. 4, 1973; 39 FR 10885, Mar. 22, 1974; 45 FR 32658, May 19, 1980; 45 FR 52143, Aug. 6, 1980]

§ 264.2 Application for creation of record of lawful permanent residence and Alien Registration Receipt Card, Form I-551.

(a) *Jurisdiction.* An applicant who believes that he/she is eligible for presumption of lawful admission for permanent residence under § 101.1 or § 101.2 of this chapter or for lawful permanent residence as a person born in the United States to a foreign diplomatic officer under § 101.3 of this chapter shall submit his/her application for creation of a record of lawful permanent residence to the Service office having jurisdiction over the applicant's place of residence in the United States. The applicant must be physically present in the United States at the time of submission of his/her application.

(b) *Applicant under eighteen years old.* If the applicant is under eighteen years old, the applicant's parent or legal guardian shall prepare and sign the application in the applicant's behalf.

(c) *Filing application*—(1) *Presumption of lawful admission for permanent residence.* An applicant who believes that he/she is eligible for presumption of lawful admission for permanent residence under § 101.1 or § 101.2 of this chapter shall submit the following:

(i) A completed Form I-90, Application by a Lawful Permanent Resident for an Alien Registration Receipt Card, Form I-551, without fee.

(ii) Form G-325A, Biographic Information.

(iii) The applicant's fingerprints on Form FD-258.

(iv) A list of all the applicant's arrivals in and departures from the United States.

(v) A statement signed by the applicant indicating the basis of the applicant's claim to presumption of lawful admission for permanent residence.

(vi) Documentary evidence substantiating the applicant's claim to presumption of lawful admission for permanent residence, including proof of continuous residence in the United States.

(vii) Two photographs prepared in accordance with the specifications outlined in the instructions to Form I-90. The immigration officer to whom the application is submitted, however, may waive the photographs for just cause.

(2) *Lawful permanent residence as a person born in the United States under diplomatic status.* An applicant who believes that he/she is eligible for lawful permanent residence as a person born in the United States to a foreign diplomatic officer under § 101.3 of this chapter shall submit the following:

(i) A completed Form I-90, Application by a Lawful Permanent Resident for an Alien Registration Receipt Card, Form I-551, without fee.

(ii) Form G-325A, Biographic Information.

(iii) The applicant's fingerprints on Form FD-258.

(iv) The applicant's birth certificate.

(v) An executed Form I-508, Waiver of Rights, Privileges, Exemptions, and Immunities.

(vi) Official confirmation of the diplomatic classification and occupational title of the applicant's parent(s) at the time of the applicant's birth.

(vii) A list of all the applicant's arrivals in and departures from the United States.

(viii) Proof of continuous residence in the United States.

(ix) Two photographs prepared in accordance with the specifications outlined in the instructions to Form I-90. The immigration officer to whom the application is submitted, however, may waive the photographs for just cause.

(3) *Applicant under fourteen years old.* An applicant under fourteen years old shall not submit Form G-325A,

Biographic Information, or his/her fingerprints on Form FD-258.

(d) *Personal appearance.* Each applicant, including an applicant under eighteen years of age, must submit his/her application in person. This requirement may be waived at the discretion of the immigration officer to whom the application is submitted because of confinement of age, physical infirmity, illiteracy, or other compelling reason.

(e) *Interview.* The applicant may be required to appear in person before an immigration officer prior to adjudication of the application to be interviewed under oath concerning his/her eligibility for creation of a record of lawful permanent residence.

(f) *Decision.* The decision regarding creation of a record of lawful permanent residence for an alien eligible for presumption of lawful admission for permanent residence or for a person born in the United States to a foreign diplomatic officer will be made by the district director having jurisdiction over the applicant's place of residence.

(g) *Date of record of lawful permanent residence*—(1) *Presumption of lawful admission for permanent residence.* If the application is granted, the applicant's permanent residence will be recorded as of the date of the applicant's arrival in the United States under the conditions which caused him/her to be eligible for presumption of lawful admission for permanent residence.

(2) *Lawful permanent residence as a person born in the United States under diplomatic status.* If the application is granted, the applicant's permanent residence will be recorded as of his/her date of birth.

(h) *Denied application.* If the application is denied, the decision may not be appealed.

(Secs. 101(a)(20), 103, 262, 264 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1101(a)(20), 1103, 1302, 1304)

[47 FR 941, Jan. 8, 1982]

PART 265—NOTICES OF ADDRESS

AUTHORITY: Secs. 103, 265 of the Immigration and Nationality Act, as amended by sec. 11, Pub. L. 97-166, 95 Stat. 1617 (8 U.S.C. 1103, 1305).

§ 265.1 Forms.

Except for those exempted by section 263(b) of the Act, all aliens in the United States required to register under section 262 of the Act shall report each change of address and new address within 10 days on Form AR-11. This form is available at post offices and Service offices in the United States. The completed form must be mailed to the Department of Justice, Immigration and Naturalization Service, Washington, DC 20536.

[47 FR 44239, Oct. 7, 1982]

PART 274—SEIZURE AND FORFEITURE OF VEHICLES, VESSELS AND AIRCRAFT

Sec.

274.1 Definitions.
274.2 Officers who will make seizures.
274.3 Custody and other duties of the regional commissioner.
274.4 Conveyances subject to seizure; termination of interest.
274.5 Return to owner of seized conveyance not subject to forfeiture; opportunity for personal interview.
274.6 Proof of property interest.
274.7 Appraisal.
274.8 Notice to registered owner and lienholder of seizure.
274.9 Advertisement.
274.10 Judicial forfeiture upon claim and bond.
274.11 Summary forfeiture.
274.12 Judicial forfeiture.
274.13 Procedures for filing petitions.
274.14 Petition for remission.
274.15 Petition for mitigation.
274.16 Petition for restoration of proceeds.
274.17 Time for filing petitions.
274.18 Straw purchase transactions.
274.19 Handling of petitions; judicial forfeiture.
274.20 Compromise of claim.
274.21 Awards of compensation to informants.

AUTHORITY: Secs. 103, 274(b) of the Immigration and Nationality Act as amended by sec. 12, Pub. L. 97-116, 95 Stat. 1617 (8 U.S.C. 1103, 1324(b)).

SOURCE: 47 FR 19317, May 5, 1982, unless otherwise noted.

§ 274.1 Definitions.

As used in this part, the following terms mean:

(a) The term "common carrier," as defined in 49 U.S.C. 1(3), means an express carrier, a rail carrier, a sleeping car carrier, a motor common carrier, a water common carrier, and a freight forwarder.

(b) The term "consenting party or privy to the illegal act" means that the person knew of the illegal activity. A person shall be presumed to have knowledge of an illegal activity if the facts and circumstances are such that a person would reasonably be expected to know of the illegal activity.

(c) The term "conveyance" means a vessel, vehicle, or aircraft as used in section 274(b) of the Act. A trailer shall be considered a vehicle if it is being towed or readily capable of being towed. However, an immobilized house trailer which has been placed on permanent foundations, which is not readily mobile, is not a vehicle subject to seizure.

(d) The term "custodian" means the regional commissioner who, under § 274.3 of this part has been designated to receive and maintain in storage all conveyances seized under the Act.

(e) The term "lien" means an interest created by a conditional sales contract, mortgage, title retention contract, lease, or debt reduced to a judicial judgment against the vehicle.

(f) The term "owner" means a person or persons who have the right to possess and use the conveyance to the exclusion of others.

(g) The term "person" means an individual, partnership, corporation, joint business enterprise, or other entity capable of owning a conveyance.

(h) The term "property interest" means any assertion of ownership, lien, or other legal entitlement to permanent possession of the vehicle.

(i) The term "record" means an arrest followed by a conviction, except that a single arrest and conviction and the expiration of any sentence imposed as a result of the conviction, all of which occurred more than ten years prior to the date the petitioner acquired interest in the seized property, is not considered a record: *Provided, however,* that two convictions shall always be considered a record regardless of when the convictions occurred: *And provided further,* that the regional commissioner may consider as constituting a record, an arrest or series of arrests in which the charge or charges were subsequently dismissed for reasons other than acquittal or lack of evidence.

(j) The term "related crime" means any crime related to the illegal bringing in, harboring, transportation, entry, reentry, or importation of aliens.

(k) The term "reputation" means repute with a law enforcement agency or among law enforcement officers or in the community generally, including any pertinent neighborhood or other area.

(l) The term "regional commissioner" means the regional commissioner of the Immigration and Naturalization Service or his delegate.

(m) The term "seizure" means the act of taking the conveyance into the custody of the Service for the express purpose of forfeiting it in accordance with the provisions of section 274(b) of the Act.

[47 FR 19317, May 5, 1982, as amended at 47 FR 44240, Oct. 7, 1982]

§ 274.2 Officers who will make seizures.

For the purpose of carrying out the provisions of section 274(b) of the Act, any immigration officer may be authorized and designated by the Commissioner of the Immigration and Naturalization Service to seize a conveyance which may be subject to seizure.

§ 274.3 Custody and other duties of the regional commissioner.

Any officer seizing a conveyance under the Act shall store the conveyance in a location designated by the custodian, which location shall be generally in the judicial district of the seizure. Regional commissioners are designated as custodians to receive and maintain in storage all conveyances seized under the Act. The regional commissioners are also authorized to dispose of any conveyances pursuant to the Act and any other applicable statutes or regulations relative to disposal, and to perform other duties (not inconsistent with the provisions of the Act) regarding the seized conveyances and the proceeds of sales thereof as are imposed on district directors of the U.S. Customs Service with respect to seizures under the Customs law, including the maintenance of appropriate records concerning the seizure and disposition of vehicles.

§ 274.4 Conveyances subject to seizure; termination of interest.

(a) Any conveyance which an officer has probable cause to believe has been used in the commission or furtherance of a violation of section 274(a) of the Act is subject to seizure.

(b) Any property interest is automatically terminated as of the date of the seizure if the vehicle is later forfeited. Any provision of state law which recognizes a continued property interest or right to reinstatement of property in a conveyance has no effect after the seizure.

(c) The regional commissioner has authority to execute a document of title which will be recognized in deciding any challenge to ownership of a conveyance forfeited under this part.

§ 274.5 Return to owner of seized conveyance not subject to forfeiture; opportunity for personal interview.

(a) The Service shall attempt with due diligence to ascertain the ownership of any conveyance seized under section 274(b) of the Act and this part, to determine whether the conveyance is subject to forfeiture.

(b) The following conveyances are not subject to forfeiture: (1) A conveyance used by any person as a common carrier unless it appears that the owner or other person in charge was a consenting party or privy to the illegal act; (2) a conveyance established by the owner to have been unlawfully in the possession of a person other than the owner in violation of law; and (3) a conveyance established by the owner to have been used in an act to which the owner was not privy; or did not consent, and the owner took all reasonable steps to prevent the illegal use of the conveyance.

(c) The owner of the seized conveyance will be informed of the right to request a personal interview with an immigration officer and to present evidence to establish that the vehicle is not subject to forefeiture. If the officer determines not to forfeit the vehicle, the vehicle may be returned to the owner upon payment of costs as provided for in paragraph (d) of this section.

(d) If at any time after seizure the regional commissioner decides not to forfeit the conveyance, the owner shall be notified by letter, return receipt requested, that the vehicle will be made available at the place of storage. The owner is responsible for all expenses of seizure and custody, which must be paid prior to release of the conveyance. If the conveyance involved is the subject of judicial forfeiture proceedings instituted under section 274(b) of the Act and § 274.12 of this part, the regional commissioner shall notify the U.S. Attorney that the conveyance is required to be returned to the owner under section 274(b) of the Act, and that judicial forfeiture proceedings must be terminated. The notice to the owner must also state that if the conveyance remains unclaimed for 60 days following the receipt of the notice provided in this paragraph, the conveyance shall be considered to be voluntarily abandoned to the government, and the regional commissioner shall dispose of it under section 274(b) of the Act and this part.

[47 FR 19317, May 5, 1982 as amended at 47 FR 44240, Oct. 7, 1982]

§ 274.6 Proof of property interest.

The burden of proof is on the claimant that the property interest existed prior to seizure. A presumption that an interest does not exist will be made where the claimant fails to present documentation showing compliance with required state formalities.

§ 274.7 Appraisal.

The custodian shall appraise the conveyance to determine the domestic value at the time and place of seizure. The custodian shall use appraisal publications showing wholesale values common to the area. If there is no market for the conveyance at the place of seizure, the domestic value will be considered the wholesale value in the principal market nearest the place of seizure. The wholesale value will be the presumed value of the conveyance.

§ 274.8 Notice to registered owner and lienholder of seizure.

Whenever a seizure takes place, notice must be given to the registered owner and any known lienholder notifying them of the seizure of the conveyance and the contemplated forfeiture. The notice must be accompanied by copies of the applicable regulations, section 274 of the Act, and the proposed advertisement if an advertisement is required under § 274.9 of this part. The owner shall be informed of the provisions of § 274.5(b) of this part.

§ 274.9 Advertisement.

(a) If the appraised value does not exceed $100,000, the custodian shall cause a notice of the seizure and of the intention to forfeit and sell or otherwise dispose of the conveyance to be published once a week for at least three successive weeks in a newspaper of general circulation in the judicial district in which the seizure occurred. A copy of this notice must be sent to the registered owner of the conveyance and to any known lienholder, in accordance with § 274.8 of this part.

(b) The notice must: (1) Describe the conveyance seized and show the motor and serial numbers, if known; (2) state the time, cause, and place of seizure; and (3) state that the conveyance is subject to forfeiture except as provided by Part 274 of this chapter.

[47 FR 19317, May 5, 1982, as amended at 50 FR 7575, Feb. 25, 1985]

§ 274.10 Judicial forfeiture upon claim and bond.

(a) Any person claiming ownership of a seized conveyance may obtain judicial review by filing a claim within 20 days of the date of first publication of the notice of seizure, alleging that the conveyance was improperly seized, and posting bond to cover all the costs and expenses of the proceedings if forfeiture is denied. The bond in the sum of the lesser of $2,500 or ten percent of the value of the property, but in no event less that $250 must be in cash, certified check, or on Form I-637 (Bond of Claimant of Seized Conveyance for Costs of Court), if the surety is approved by the regional commissioner. The bond must be made payable to the Immigration and Naturalization Service and will be maintained in the custody of the regional commissioner. The regional commissioner may waive the bond requirement in the manner provided by *Waiver of fees* in § 103.7(c)(1) of this chapter.

(b) The regional commissioner shall transmit the claim, notice that a satisfactory surety has been accepted, and provide a description of the facts and circumstances of the seizure to the United States Attorney for the judicial district in which the seizure was made, for forfeiture proceedings on the vehicle in the manner prescribed by law.

(c) The filing of a claim and the posting of bond does not entitle the claimant to possession of the vehicle but does stop the summary forfeiture proceedings. Upon conclusion of the action, the regional commissioner shall disburse the money to pay costs up to the amount of the bond and shall return any additional sum to the obligor.

[47 FR 19317, May 5, 1982, as amended at 50 FR 7575, Feb. 25, 1985]

§ 274.11 Summary forfeiture.

If the appraised value does not exceed $100,000, and a claim and bond are not filed within 20 days of the first publication of the advertisement specified under § 274.9 of this part, the regional commissioner, as custodian, may declare the conveyance forfeited. The regional commissioner shall prepare the declaration of forfeiture and proceed as provided for in § 274.3 of this part.

[47 FR 19317, May 5, 1982, as amended at 50 FR 7575, Feb. 25, 1985]

§ 274.12 Judicial forfeiture.

If the appraised value is greater than $100,000, or a claim and bond have been received for a conveyance appraised at $100,000 or less, as provided by § 274.10 of this part, the custodian shall transmit a description of the conveyance and a complete statement of the facts and circumstances surrounding the seizure to the U.S. Attorney for the judicial district in which the seizure was made for forfeiture proceedings in the manner provided by law. The U.S. Attorney shall also be furnished with the newspaper advertisement if an advertisement was required by § 274.9 of this part.

[47 FR 19317, May 5, 1982, as amended at 50 FR 7575, Feb. 25, 1985]

§ 274.13 Procedures for filing petitions.

(a) Any person having an appropriate property interest in any conveyance which has been seized may file a petition. The petition shall be filed with the regional commissioner if the conveyance is subject to summary forfeiture under § 274.11 of this part, and filed with the Attorney General if the conveyance is subject to judicial forfeiture under § 274.10 or § 274.12 of this part. The petition must be executed and sworn to by the person alleging an interest in the conveyance.

(b) The petition must include the following: (1) A complete description of the conveyance, including motor and serial numbers, if known, and the date and place of seizure; (2) the petitioner's interest in the conveyance which must be established as provided in § 274.6 of this part; and, (3) the facts and circumstances relied upon by the petitioner to justify remission, mitigation, or restoration.

(c) A separate petition must be filed to support each request for relief from forfeiture as provided for in §§ 274.14, 274.15, or 274.16 of this part.

(d) Although a petitioner has satisfactorily established compliance with the administrative conditions applicable to the particular situation, the regional commissioner may deny relief if there are unusual circumstances present which provide reasonable grounds for concluding that remission or mitigation of the forfeiture would be contrary to the interests of justice.

§ 274.14 Petition for remission.

(a) A petition for remission may be filed by any person holding a lien against a seized conveyance. The petition must be filed as provided for in § 274.13 of this part.

(b) The owner of the conveyance is ineligible for the relief under this section and must proceed under § 274.5 of this part for relief.

(c) The regional commissioner shall not remit a forfeiture unless the petitioner establishes:

(1) A valid, good faith interest in the seized conveyance;

(2) That at no time did the petitioner have any knowledge or reason to believe that the conveyance in which an interest is claimed was being or would be used in violation of the law;

(3) That at no time did the petitioner have any knowledge or reason to believe that the owner of the conveyance had any record or reputation for violating laws of the United States or of any state for related crime; and

(4) That the petitioner had taken all reasonable steps to prevent the illegal use of the conveyance.

(d) Grant of a petition for remission is conditioned upon:

(1) Payment of all costs of seizure incurred by the United States or payment of the amount by which the appraised value at time of seizure exceeds the petitioner's net interest in the conveyance, whichever is greater;

(2) Execution of an instrument by the petitioner holding the government, its agents, and employees harmless from all claims which may result from the grant of remission;

(3) Execution of an agreement that the vehicle shall not be returned to any culpable owner; and

(4) Any other terms or conditions as the regional commissioner determines to be appropriate.

(e) Where rival claimants exist, remission will not be granted to any petitioner who has a subordinate lien to another petitioner nor until any claim of the registered owner has been finally adjudicated.

(f) Filing of a petition does not extend the time for filing a claim and bond.

§ 274.15 Petition for mitigation.

(a) In addition to discretionary authority to grant relief by way of complete remission of forfeiture, the regional commissioner may mitigate forfeitures of seized conveyances. A petition for mitigation may be filed only as provided for in § 274.13 of this part. To be eligible for relief under this section, the petitioner must establish that return of the vehicle promotes the interests of justice and does not diminish the deterrent effect of section 274(b) of the Act. Mitigation will take the form of a money penalty imposed upon the petitioner in addition to any other sums chargeable as a condition to remission. This penalty is considered as an item of cost payable by the petitioner.

(b) Grant of a petition for mitigation is conditioned upon:

(1) Execution of an instrument by the petitioner holding the government, its agents, and employees harmless from all claims which may result from the grant of mitigation;

(2) Execution of an agreement that the vehicle shall not be returned to any culpable owner; and

(3) Any other terms or conditions as the regional commissioner determines to be appropriate.

§ 274.16 Petition for restoration of proceeds.

(a) A petition for restoration of proceeds of sale, or for value of a conveyance placed in official use must be supported by proof that the petitioner did not know of the seizure prior to the declaration of forfeiture.

(b) Any petition for restoration of proceeds must be filed and may be granted only as provided for in §§ 274.5, 274.14, and 274.15 of this part, as applicable.

§ 274.17 Time for filing petitions.

(a) Once a seized conveyance has been forfeited and placed in official use, or sold, a petition for remission or mitigation of forfeiture can no longer be accepted.

(b) A petition for restoration of proceeds of sale, or for the value of property placed in official use, must be filed within 90 days of the sale of the property, or within 90 days of the date the property is placed in official use.

§ 274.18 Straw purchase transactions.

Any person who purchases in their own name a conveyance for another who has a record or reputation for related crimes is a straw purchaser. If a lienholder knows or has reason to believe that the purchaser of record is a straw purchaser, a petition filed by the lienholder shall be denied unless the petitioner-lienholder complies with the requirements of § 274.14(c) of this part as to both the purchaser of record and the real purchaser. This rule also applies where money is borrowed on the security of property held in the name of the straw purchaser for the real purchaser.

§ 274.19 Handling of petitions; judicial forfeiture.

(a) If the petition involves a case which has been referred to the U.S. Attorney for institution of judicial forfeiture, the regional commissioner shall transmit the petition to the U.S. Attorney for the judicial district in which the seizure occurred. The regional commissioner shall notify the petitioner of this action.

(b) The regional commissioner shall initiate a Service investigation into the merits of every petition transmitted to the U.S. Attorney, and shall, if requested, promptly submit a report to the U.S. Attorney.

(c) Upon receipt of a petition and a copy of the investigation, the United States Attorney shall forward a copy of the petition, the report, and a recommendation as to the grant or denial of the petition to the Assistant Attorney General, Criminal Division, Department of Justice for adjudication.

§ 274.20 Compromise of claim.

Once a judicial forfeiture proceeding is commenced, it may be compromised by the United States Attorney only with the concurrence of the Assistant Attorney General, Criminal Division, Department of Justice. In considering a compromise, the United States Attorney shall consider the probabilities for successfully prosecuting the forefeiture action, the terms of the possible compromise offer. The United States Attorney shall consult with the Regional Commissioner before action is taken.

[47 FR 44241, Oct. 7, 1982]

§ 274.21 Awards of compensation to informants.

The regional commissioners may, as provided for in 19 U.S.C. 1619, make awards of compensation to informants who have provided information leading to seizures and eventual forfeitures of conveyances. An award is not to exceed 25 percent of the net recovery to the United States nor exceed $150,000 in any case.

[47 FR 19317, May 5, 1982, as amended at 50 FR 7575, Feb. 25, 1985]

PART 280—IMPOSITION AND COLLECTION OF FINES

Sec.

280.1 Notice of intention to fine; administrative proceedings not exclusive.
280.2 Special provisions relating to aircraft.
280.3 Departure of vessel or aircraft prior to denial of clearance.
280.4 Data concerning cost of transportation.
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280.14 Record.
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280.21 Seizure of aircraft.
280.51 Application for mitigation or remission.

AUTHORITY: Secs. 103, 231, 233, 237, 239, 243, 251, 253-256, 272, 273, 280, 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221-223, 226, 227, 230; 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, 1330, unless otherwise noted.

SOURCE: 22 FR 9807, Dec. 6, 1957, unless otherwise noted.

§ 280.1 Notice of intention to fine; administrative proceedings not exclusive.

Whenever a district director has reason to believe that any person has violated any of the provisions of the Immigration and Nationality Act and has thereby become liable to the imposition of an administrative fine under the Immigration and Nationality Act, he shall cause a Notice of Intention to Fine, Form I-79, to be served as provided in this part. Nothing in this subchapter shall affect, restrict, or prevent the institution of a civil suit, in the discretion of the Attorney General, under the authority contained in section 280 of the Immigration and Nationality Act.

§ 280.2 Special provisions relating to aircraft.

In any case in which the imposition of a fine is predicated upon an alleged violation of a regulation promulgated under authority of section 239 of the Immigration and Nationality Act, the procedure prescribed in this part shall be followed and the aircraft involved shall not be granted clearance pending determination of the question of liability to the payment of any fine, or while the fine remains unpaid; but clearance may be granted prior to the determination of such question upon the deposit of a sum sufficient to cover such fine or of a bond with sufficient surety to secure the payment thereof, approved by the district director of customs. If the alleged violation was by the owner or person in command of the aircraft, the penalty provided for shall be a lien against the aircraft, which, except as provided in § 280.21, shall be seized by the district director or by an immigration officer designated by the district director, and placed in the custody of the customs officer who is in charge of the port of entry or customs station nearest the place of seizure. If the owner or owners of the airport at which such aircraft is located are the owners of the seized aircraft, the aircraft shall be removed to another suitable place for storage if practicable.

[22 FR 9807, Dec. 6, 1957, as amended at 32 FR 17651, Dec. 12, 1967]

§ 280.3 Departure of vessel or aircraft prior to denial of clearance.

If any vessel or aircraft which is subject to the imposition of a fine shall have departed from the United States prior to the denial of clearance by the district director of customs and such vessel or aircraft is subsequently found in the United States, a Notice of Intention to Fine, Form I-79, shall be served as provided in this part, if such form has not been previously served for the same violation. Clearance of such vessel or aircraft shall be withheld by the district director of customs, and the procedure prescribed in this part shall be followed to the same extent and in the same manner as though the vessel or aircraft had not departed from the United States. Aircraft subject to the provisions of § 280.2, which shall have departed from the United States prior to the time of seizure could be effected, shall be subject to all of the provisions of this part, if subsequently found in the United States, to the same extent as though it had not departed from the United States.

[22 FR 9807, Dec. 6, 1957, as amended at 32 FR 17651, Dec. 12, 1967]

§ 280.4 Data concerning cost of transportation.

Within five days after request therefor, transportation companies shall furnish to the district director pertinent information contained in the original transportation contract of all rejected aliens whose cases are within the purview of any of the provisions of the Immigration and Nationality Act relating to refund of passage monies, and shall specify the exact amounts paid for transportation from the initial point of departure (which point shall be indicated) to the foreign port of embarkation, from the latter to the port of arrival in the United States and from the port of arrival to the inland point of destination, respectively, and also the amount paid for headtax, if any.

§ 280.5 Mitigation or remission of fines.

In any case in which mitigation or remission of a fine is authorized by the Immigration and Nationality Act, the party served with Notice of Intention to Fine may apply in writing to the district director for such mitigation or remission.

§ 280.6 Bond to obtain clearance; form.

A bond to obtain clearance of a vessel or aircraft under section 231, 233, 237, 239, 243, 251, 253, 254, 255, 256, 272, or 273 of the Immigration and Nationality Act shall be filed on Form I-310.

§ 280.7 Approval of bonds or acceptance of cash deposit to obtain clearance.

The district director of customs is authorized to approve the bond, or accept the sum of money which is being offered for deposit under any provision of the Immigration and Nationality Act or by this chapter for the purpose of obtaining clearance of a vessel or aircraft.

[22 FR 9807, Dec. 6, 1957, as amended at 32 FR 17651, Dec. 12, 1967]

§ 280.11 Notice of intention to fine; procedure.

Notice of Intention to Fine, Form I-79, shall be prepared in triplicate, with one additional copy for each additional person on whom the service of such notice is contemplated. The notice shall be addressed to any or all of the available persons subject to fine. A copy of the notice shall be served by personal service on each such person. If the notice is delivered personally, the person upon whom it is served shall be requested to acknowledge such service by signing his name to the duplicate and triplicate copies. The officer effecting such service shall attest to the service by signing his name thereon and shall indicate thereon the date and place of service. If the person so served refuses to acknowledge service, or if service is made by leaving it at an office or mailing it, the person making such service shall indicate the method and date on the duplicate and triplicate copies of Form I-79, and shall sign his name upon such copies. The duplicate copy shall be retained by the district director of immigration and naturalization and the triplicate copy shall be delivered directly to the district director of customs for the district in which the vessel or aircraft is located, and the district director of customs shall withhold clearance until deposit is made or bond furnished as provided in the Immigration and Nationality Act. If the vessel or aircraft is located in a customs district which is outside the jurisdiction of the office of the Service having jurisdiction over the matter, the triplicate copy shall be forwarded to the office of the Service nearest such customs district for delivery to the district director of customs.

[22 FR 9807, Dec. 6, 1957, as amended at 32 FR 17651, Dec. 12, 1967; 37 FR 11471, June 8, 1972]

§ 280.12 Answer and request or order for interview.

Within 30 days following the service of the Notice of Intention to Fine (which period the district director may extend for an additional period of 30 days upon good cause being shown), any person upon whom a notice under this part has been served may file with the district director a written defense, in duplicate, under oath setting forth the reasons why a fine should not be imposed, or if imposed, why it should be mitigated or remitted if permitted by the Immigration and Nationality Act, and stating whether a personal appearance is desired. Documentary evidence shall be submitted in support of such defense and a brief may be submitted in support of any argument made. If a personal interview is requested, the evidence in opposition to the imposition of the fine and in support of the request for mitigation or remission may be presented at such interview. An interview shall be conducted if requested by the party as provided hereinabove or, if directed at any time by the Board, the Commissioner, or the district director.

§ 280.13 Disposition of case.

(a) *Allegations admitted or no answer filed.* If a request for personal appearance is not filed and (1) the answer admits the allegations in the notice, or (2) no answer is filed, the district director shall enter such order in the case as he deems appropriate and no appeal from his decision may be taken.

(b) *Answer filed; personal appearance.* Upon receipt of an answer asserting a defense to the allegations in the notice without requesting a personal appearance, or if a personal appearance is requested or directed, the case shall be assigned to an immigration officer. The immigration officer shall prepare a report summarizing the evidence and containing his findings and recommendation. The record, including the report and recommendation of the immigration officer, shall be forwarded to the district director. The district director shall note on the report of the immigration officer whether he approves or disapproves the recommendation of the immigration officer. The person shall be informed in writing of the decision of the district director and, if his decision is that a fine shall be imposed or that the requested mitigation or remission shall not be granted, of the reasons for such decision. From the decision of the district director an appeal may be taken to the Board within 15 days after the mailing of the notification of decision as provided in Part 3 of this chapter.

[22 FR 9808, Dec. 6, 1957, as amended at 23 FR 9124, Nov. 26, 1958]

§ 280.14 Record.

The record made under § 280.13 shall include the request for the interview or a reference to the order directing the interview; the medical certificate, if any; a copy of any record of hearing before a Board of Special Inquiry, Hearing Examiner, Hearing Officer, or Special Inquiry Officer which is relevant to the fine proceedings; the duplicate copy of the Notice of Intention to Fine; the evidence upon which such Notice was based; the duplicate of any notices to detain, deport, deliver, or remove aliens; notice to pay expenses; evidence as to whether any deposit was made or bond furnished in accordance with the Immigration and Nationality Act; reports of investigations conducted; documentary evidence and testimony adduced at the interview; the original of any affidavit or brief filed in opposition to the imposition of fine; the application for mitigation or remission; and any other relevant matter.

§ 280.15 Notice of final decision to district director of customs.

At such time as the decision under this part is final, the regional administrative officer shall be furnished a copy of the decision by the district director of immigration and naturalization. The regional administrative officer shall notify the district director of customs who was furnished a copy of the Notice of Intention to Fine of the final decision made in the case. Such notification need not be made if the regional administrative officer has been previously furnished with a notice of collection of the amount of the penalty by the district director of customs.

[32 FR 17651, Dec. 12, 1967]

§ 280.21 Seizure of aircraft

Seizure of an aircraft under the authority of section 239 of the Act and § 280.2 will not be made if such aircraft is damaged to an extent that its value is less than the amount of the fine which may be imposed. If seizure of an aircraft for violation of section 239 of the Act is to be made, Form G-297 (Order to Seize Aircraft) and Form G-298 (Public Notice of Seizure) shall be prepared in septuple and the originals furnished to the immigration officer who will effect the seizure. The original of Form G-297, properly endorsed as to date and place of seizure, shall be returned for retention in the relating file after seizure is effected. The original of Form G-298 shall be placed on the seized aircraft and a copy retained in the file. Copies of both forms shall be served upon the owner of the aircraft and the pilot if other than the owner. Copies shall also be furnished the district director of customs and the United States Attorney for the district in which the seizure was made. In addition, immediately upon the seizure of an aircraft, or prior thereto, if circumstances permit, a full report of the facts in the case shall be submitted by the district director to the United States Attorney for the district in which the seizure was made, together with copies of Form G-296 (Report of Violation) and Form I-79 (Notice of Intention to Fine). The report shall include the cost incurred in seizing and guarding the aircraft and an estimate of the further additional cost likely to be incurred.

[29 FR 14433, Oct. 21, 1964, as amended at 32 FR 17651, Dec. 12, 1967]

§ 280.51 Application for mitigation or remission.

(a) *When application may be filed.* An application for mitigation or remission of a fine may be filed as provided under § 280.12 of this part; or, within 30 days after the date of receipt of the district director's decision to impose a fine whether or not the applicant responded to the Notice of Intention to Fine.

(b) *Form and contents of application.* An application for mitigation or remission shall be filed in duplicate under oath and shall include information, supported by documentary evidence, as to the basis of the claim to mitigation or remission, and as to the action, if any, which may have been taken by the applicant, or as to the circumstances present in the case which, in the opinion of the applicant, justified the granting of his application.

(c) *Disposition of application.* The application, if filed with the answer, shall be disposed of as provided in § 280.13. In any other case the application shall be considered and decided by the district director from whose decision an appeal may be taken to the Board within 15 days after the mailing of the notification of decision as provided in Part 3 of this chapter.

(Secs. 103, 239, 254, 255, 256, 271, 273 and 280; 8 U.S.C. 1103, 1229, 1284, 1285, 1286, 1321, 1323 and 1330)

[22 FR 9808, Dec. 6, 1957, as amended at 23 FR 9124, Nov. 26, 1958; 46 FR 28624, May 23, 1981]

PART 282—FORMS FOR SALE TO PUBLIC

Authority: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103.

§ 282.1 Forms printed by the Public Printer.

The Public Printer is authorized to print for sale to the public, the forms listed in § 299.3 of this chapter.

[45 FR 6777, Jan. 30, 1980]

PART 287—FIELD OFFICERS; POWERS AND DUTIES

Sec.
287.1 Definitions.
287.2 Criminal violations; investigation and action.
287.3 Disposition of cases of aliens arrested without warrant.
287.4 Subpoena.
287.5 Power and authority to administer oaths.
287 6 Proof of official records.

AUTHORITY: Secs. 103, 235, 236, 242, 287, 66 Stat. 173, 198, 200, 208, as amended, 233; 8 U.S.C. 1103, 1225, 1226, 1252, 1357.

§ 287.1 Definitions.

(a)(1) *External boundary.* The term "external boundary," as used in section 287(a)(3) of the Act, means the land boundaries and the coast line of the United States, including the ports, harbors, bays and other enclosed arms of the sea along the coast, and a marginal belt of the sea extending three geographic miles from the outer limits of the land that encloses an arm of the sea.

(2) *Reasonable distance.* The term "reasonable distance," as used in section 287(a) (3) of the Act, means within 100 air miles from any external boundary of the United States or any shorter distance which may be fixed by the district director, or, so far as the power to board and search aircraft is concerned any distance fixed pursuant to paragraph (b) of this section.

(b) *Reasonable distance; fixing by district directors.* In fixing distances not exceeding 100 air miles pursuant to paragraph (a) of this section, district directors shall take into consideration topography, confluence of arteries of transportation leading from external boundaries, density of population, possible inconvenience to the traveling public, types of conveyances used, and reliable information as to movements of persons effecting illegal entry into the United States: *Provided,* That whenever in the opinion of a district director a distance in his district of more than 100 air miles from any external boundary of the United States would because of unusual circumstances be reasonable, such district director shall forward a complete report with respect to the matter to the Commissioner, who may, if he determines that such action is justified, declare such distance to be reasonable.

(c) *Exercise of power by immigration officers.* Any immigration officer is hereby authorized to exercise anywhere in the United States all the powers conferred by section 287 of the Act.

(d) *Disposition of felony cases.* The cases of persons arrested for felonies under paragraph (4) of section 287(a) of the Immigration and Nationality Act shall be handled administratively in accordance with the applicable provisions of § 287.2 but in no case shall there be prejudiced the right of the person arrested to be taken without unnecessary delay before another near-by officer empowered to commit persons charged with offenses against the laws of the United States.

(e) *Power to arrest persons who bring in, transport, or harbor certain aliens, or induce them to enter.* Any immigration officer shall have authority to make arrests for violations of any provision of section 274 of the Immigration and Nationality Act.

(f) *Patrolling the border.* The phrase "patrolling the border to prevent the illegal entry of aliens into the United States" as used in section 287 of the Immigration and Nationality Act means conducting such activities as are customary, or reasonable and necessary, to prevent the illegal entry of aliens into the United States.

[22 FR 9808, Dec. 6, 1957, as amended at 29 FR 13244, Sept. 24, 1964]

§ 287.2 Criminal violations; investigation and action.

Whenever a district director or chief patrol agent has reason to believe that there has been a violation punishable under any criminal provision of the laws administered or enforced by the Service, he shall cause an investigation to be made immediately of all the pertinent facts and circumstances and shall take or cause to be taken such further action as the results of such investigation warrant.

[35 FR 16362, Oct. 20, 1970]

§ 287.3 Disposition of cases of aliens arrested without warrant.

An alien arrested without a warrant of arrest under the authority contained in section 287(a)(2) of the Immigration and Nationality Act shall be examined as therein provided by an officer other than the arresting officer, unless no other qualified officer is readily available and the taking of the alien before another officer would entail unnecessary delay, in which event the arresting officer, if the conduct of such examination is a part of the duties assigned to him, may examine the alien. If such examining officer is satisfied that there is prima facie evidence establishing that the arrested alien was entering or attempting to enter the United States in violation of the immigration laws, he shall refer the case to an immigration judge for further inquiry in accordance with Parts 235 and 236 of this chapter or take whatever other action may be appropriate or required under the laws or other regulations applicable to the particular case. If the examining officer is satisfied that there is prima facie evidence establishing that the arrested alien is in the United States in violation of the immigration laws, further action in the case shall be taken as provided in Part 242 of this chapter. After the examining officer has determined that formal proceedings under sections 236, 237, or 242 of the Act, will be instituted, an alien arrested without warrant of arrest shall be advised of the reason of his arrest and his right to be represented by counsel of his own choice, at no expense to the Government. He shall also be provided with a list of the available free legal services programs qualified under Part 292a of this chapter and organizations recognized pursuant to § 292.2 of this chapter, located in the district where his deportation hearing will be held. It shall be noted on Form I-213 that such a list was provided to the alien. He shall also be advised that any statement he makes may be used against him in a subsequent proceeding and that a decision will be made within 24 hours or less as to whether he will be continued in custody or released on bond or recognizance. Unless voluntary departure has been granted pursuant to § 242.5 of this chapter, the alien's case shall be presented promptly, and in any event within 24 hours, to the district director, acting district director, deputy district director, assistant district director for investigations, officers in charge at Agana, GU; Albany, NY; Charlotte Amalie, VI; Cincinnati, OH; Hammond, IN; Milwaukee, WI; Norfolk, VA; Oklahoma City, OK; Pittsburgh, PA; Providence, RI; Salt Lake City, UT; St. Louis, MO; Spokane, WA for a determination as to whether there is prima facie evidence that the arrested alien is in the United States in violation of law and for issuance of an order to show cause and warrant of arrest prescribed in Part 242 of this chapter

[22 FR 9808, Dec. 6, 1957, as amended at 32 FR 6260, Apr. 21, 1967; 44 FR 4654, Jan. 23, 1979; 44 FR 15996, Mar. 16, 1979]

§ 287.4 Subpoena.

(a) *Who may issue*—(1) *Criminal or civil investigations.* All District Directors, Deputy District Directors, Chief Patrol Agents, Deputy Chief Patrol Agents, Officers-in-Charge, Patrol Agents in Charge, Assistant District Director, Investigations, Supervisory Criminal Investigators (Anti-Smuggling) and Regional Directors, Office of Professional Responsibility, may issue a subpoena requiring the production of records and evidence for use in criminal or civil investigations.

(2) *Proceedings other than naturalization proceedings*—(1) *Prior to commencement of proceedings.* All District Directors, Deputy District Directors, Chief Patrol Agents, Deputy Chief Patrol Agents, and Officers-in-Charge, may issue a subpoena requiring the attendance of witnesses or the production of documentary evidence, or both, for use in any proceeding under this chapter, other than under Part 335 of this Chapter, or any application made ancillary to the proceeding.

(ii) *Subsequent to commencement of any proceeding.* (A) In any proceeding under this chapter, other than under Part 335 of this chapter, and in any proceeding ancillary thereto, an immigration judge having jurisdiction over the matter may, upon his/her own volition or upon application of a trial attorney, the alien, or other party affected, issue subpoenas requiring the attendance of witnesses or for the production of books, papers and other documentary evidence, or both.

(B) *Application for subpoena.* A party applying for a subpoena shall be required, as a condition precedent to its issuance, to state in writing or at the proceeding, what he/she expects to prove by such witnesses or documentary evidence, and to show affirmatively that he/she has made diligent effort, without success, to produce the same.

(C) *Issuance of subpoena.* Upon being satisfied that a witness will not appear and testify or produce documentary evidence and that the witness' evidence is essential, the immigration judge shall issue a subpoena.

(D) *Appearance of witness.* If the witness is at a distance of more than 100 miles from the place of the proceeding, the subpoena shall provide for the witnesses' appearance at the Service office nearest to the witness to respond to oral or written interrogatories, unless the Service indicates that there is no objection to bringing the witness the distance required to enable him/her to testify in person.

(b) *Form of subpoena.* All subpoenas shall be issued on Form I-138.

(1) *Criminal or civil investigations.* The subpoena shall command the person or entity to which it is addressed to attend and to give testimony at a time or place specified. A subpoena shall also command the person or entity to which it is addressed to produce the books, papers, or documents specified in the subpoena. A subpoena may direct the taking of a deposition before an officer of the Service.

(2) *Proceedings other than naturalization proceedings.* Every subpoena issued under the provisions of this section shall state the title of the proceeding and shall command the person to whom it is directed to attend and to give testimony at a time and place specified. A subpoena shall also command the person to whom it is directed to produce the books, papers, or documents specified in the subpoena. A subpoena may direct the making of a deposition before an officer of the Service.

(c) *Service.* A subpoena issued under this section may be served by any person, over 18 years of age not a party to the case, designated to make such service by the District Director, Deputy District Director, Chief Patrol Agent, Deputy Chief Patrol Agent, Patrol Agent in Charge, Officer-in-Charge, Assistant District Director, Investigations, Supervisory Criminal Investigator (Anti-Smuggling), and Regional Director, Office of Professional Responsibility, having administrative jurisdiction over the office in which the subpoena is issued. Service of the subpoena shall be made by delivering a copy thereof to the person named therein and by tendering to him/her the fee for one day's attendance and the mileage allowed by law by the United States District Court for the district in which the testimony is to be taken. When the subpoena is issued on behalf of the Service, fee and mileage need not be tendered at the time of service. A record of such service shall be made and attached to the original copy of the subpoena.

(d) *Invoking aid of court.* If a witness neglects or refuses to appear and testify as directed by the subpoena served upon him/her in accordance with the provisions of this section, the officer issuing the subpoena shall request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the books, papers or documents designated in the subpoena. If the subpoena was issued by an immigration judge, he/she shall request the District Director in the district in which the subpoena was issued to take the action referred to in the previous sentence in the event the witness neglects or refuses to appear and testify as directed by the subpoena served upon him.

[50 FR 30134, July 24, 1985; 50 FR 47205, Nov. 15, 1985]

§ 287.5 Power and authority to administer oaths.

Any immigration officer, or any other employee individually designated by a district director, shall have the power and authority to administer oaths in or outside the United States.

[29 FR 12584, Sept. 4, 1964]

§ 287.6 Proof of official records.

(a) *Domestic.* In any proceeding under this chapter, an official record or entry therein, when admissible for any purpose, shall be evidenced by an official publication thereof, or by a copy attested by the official having legal custody of the record or by an authorized deputy.

(b) *Foreign: Countries not Signatories to Convention.* (1) In any proceeding under this chapter, an official record or entry therein, when admissible for any purpose, shall be evidenced by an official publication thereof, or by a copy attested by an officer so authorized. This attested copy in turn may but need not be certified by any authorized foreign officer both as to the genuineness of the signature of the attesting officer and as to his/her official position. The signature and official position of this certifying foreign officer may then likewise be certified by any other foreign officer so authorized, thereby creating a chain of certificates.

(2) The attested copy, with the additional foreign certificates if any, must be certified by an officer in the Foreign Service of the United States, stationed in the foreign country where the record is kept. This officer must certify the genuineness of the signature and the official position either of (i) the attesting officer; or (ii) any foreign officer whose certification of genuineness of signature and official position relates directly to the attestation or is in a chain of certificates of genuineness of signature and official position relating to the attestation.

(c) *Foreign: Countries Signatory to Convention Abolishing the Requirement of Legalization for Foreign Public Documents.* (1) In any proceeding under this chapter, a public document or entry therein, when admissible for any purpose, may be evidenced by an official publication, or by a copy properly certified under the Convention. To be properly certified, the copy must be accompanied by a certificate in the form dictated by the Convention. This certificate must be signed by a foreign officer so authorized by the signatory country, and it must certify (i) the authenticity of the signature of the person signing the document; (ii) the capacity in which that person acted, and (iii) where appropriate, the identity of the seal or stamp which the document bears.

(2) No certification is needed from an officer in the Foreign Service of public documents.

(3) In accordance with the Convention, the following are deemed to be public documents:

(i) Documents emanating from an authority or an official connected with the courts of tribunals of the state, including those emanating from a public prosecutor, a clerk of a court or a process server;

(ii) Administrative documents;

(iii) Notarial acts; and

(iv) Official certificates which are placed on documents signed by persons in their private capacity, such as official certificates recording the registration of a document or the fact that it was in existence on a certain date, and official and notarial authentication of signatures.

(4) In accordance with the Convention, the following are deemed not to be public documents, and thus are subject to the more stringent requirements of § 287.6(b) above:

(i) Documents executed by diplomatic or consular agents; and

(ii) Administrative documents dealing directly with commercial or customs operations.

[50 FR 37834, Sept. 18, 1985]

PART 289—AMERICAN INDIANS BORN IN CANADA

Sec.

289.1 Definition.

289.2 Lawful admission for permanent residence.

289.3 Recording the entry of certain American Indians born in Canada.

AUTHORITY: Secs. 103, 262, 289, 66 Stat. 173, 224, 234; 8 U.S.C. 1103, 1302, 1359; 45 Stat. 401, 54 Stat. 670; 8 U.S.C. 226a, 451.

§ 289.1 Definition.

The term "American Indian born in Canada" as used in section 289 of the Act includes only persons possessing 50 per centum or more of the blood of the American Indian race. It does not include a person who is the spouse or child of such an Indian or a person whose membership in an Indian tribe or family is created by adoption, unless such person possesses at least 50 per centum or more of such blood.

[29 FR 11494, Aug. 11, 1964]

§ 289.2 Lawful admission for permanent residence.

Any American Indian born in Canada who at the time of entry was entitled to the exemption provided for such person by the Act of April 2, 1928 (45 Stat. 401), or section 289 of the Act, and has maintained residence in the United States since his entry, shall be regarded as having been lawfully admitted for permanent residence. A person who does not possess 50 per centum of the blood of the American Indian race, but who entered the United States prior to December 24, 1952, under the exemption provided by the Act of April 2, 1928, and has maintained his residence in the United States since such entry shall also be regarded as having been lawfully admitted for permanent residence. In the absence of a Service record of arrival in the United States, the record of registration under the Alien Registration Act, of 1940 (54 Stat. 670; 8 U.S.C. 451), or section 262 of the Act, or other satisfactory evidence may be accepted to establish the date of entry.

[29 FR 11494, Aug. 11, 1964]

§ 289.3 Recording the entry of certain American Indians born in Canada.

The lawful admission for permanent residence of an American Indian born in Canada shall be recorded on Form I-181.

[33 FR 7485, May 21, 1968]

PART 292—REPRESENTATION AND APPEARANCES

Sec.

292.1 Representation of others.
292.2 Organizations qualified for recognition; requests for recognition; withdrawal of recognition; accreditation of representatives; roster.
292.3 Suspension or disbarment.
292.4 Appearances.
292.5 Service upon and action by attorney or representative of record.
292.6 Interpretation.

AUTHORITY: Secs. 103, 292, 66 Stat. 173, 235; 8 U.S.C. 1103, 1362.

§ 292.1 Representation of others.

(a) A person entitled to representation may be represented by any of the following:

(1) *Attorneys in the United States.* Any attorney as defined in § 1.1(f) of this chapter.

(2) *Law students and law graduates not yet admitted to the bar.* A law student who is enrolled in the final year of an accredited law school or a law school graduate who is not yet admitted to the bar, provided that:

(i) He is appearing on an individual case basis at the request of the person entitled to representation;

(ii) In the case of a law student, he has filed a statement that he is participating, under the direct supervision of a faculty member or an attorney, in a legal aid program or clinic conducted by the law school, and that he is appearing without direct or indirect remuneration; and

(iii) His appearance is permitted by the official before whom he wishes to appear (namely a special inquiry officer, district director, officer-in-charge, regional commissioner, the Commissioner, or the Board), which official, if in his opinion special circumstances warrant it, may require that a law student be accompanied by the supervising faculty member or attorney.

(3) *Reputable individuals.* Any reputable individual of good moral character, provided that:

(i) He is appearing on an individual case basis, at the request of the person entitled to representation;

(ii) He is appearing without direct or indirect renumeration and files a written declaration to that effect;

(iii) He has a pre-existing relationship or connection with the person entitled to representation (e.g., as a relative, neighbor, clergyman, business associate or personal friend), provided that such requirement may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available; and

(iv) His appearance is permitted by the official before whom he wished to appear (namely, a special inquiry officer, district director, officer-in-charge, regional commissioner, the Commissioner, or the Board), provided that such permission shall not be granted with respect to any individual who regularly engages in immigration and naturalization practice or preparation, or holds himself out to the public as qualified to do so.

(4) *Accredited representatives.* A person representing an organization described in § 292.2 of this chapter who has been accredited by the Board.

(5) *Accredited officials.* An accredited official, in the United States, of the government to which an alien owes allegiance, if the official appears solely in his official capacity and with the alien's consent.

(6) *Attorneys outside the United States.* An attorney other than one described in § 1.1(f) of this chapter, who does not maintain an office in the United States, who resides outside the United States and is licensed to practice law and in good standing in a court of general jurisdiction of the country in which he resides, and who is engaged in such practice.

(b) *Persons formerly authorized to practice.* A person, other than a representative of an organization described in § 292.2 of this chapter, who on December 23, 1952, was authorized to practice before the Board and the Service may continue to act as a representative, subject to the provisions of § 292.3 of this chapter.

(c) *Former employees.* No person previously employed by the Department of Justice shall be permitted to act as a representative in any case in violation of the provisions of 28 CFR 45.735-7.

(d) *Amicus curiae.* The Board may grant permission to appear, on a case-by-case basis, as amicus curiae, to an attorney or to an organization represented by an attorney, if the public interest will be served thereby.

(e) Except as set forth in this section, no other person or persons shall represent others in any case.

[40 FR 23271, May 29, 1975]

§ 292.2 Organizations qualified for recognition; requests for recognition; withdrawal of recognition; accreditation of representatives; roster.

(a) *Qualifications of organizations.* A non-profit religious, charitable, social service, or similar organization established in the United States and recognized as such by the Board may designate a representative or representatives to practice before the Service and the Board. Such organization must establish to the satisfaction of the Board that:

(1) It makes only nominal charges and assesses no excessive membership dues for persons given assistance; and

(2) It has at its disposal adequate knowledge, information and experience.

(b) *Requests for recognition.* An organization having the qualifications prescribed in paragraph (a) of this section may file an application for recognition on a Form G-27 directly with the Board, along with proof of service of a copy of the application on the district director having jurisdiction over the area in which the organization is located. The district director, within 30 days from the date of service, shall forward to the Board a recommendation for approval or disapproval of the application and the reasons therefor, or request a specified period of time in which to conduct an investigation or otherwise obtain relevant information regarding the applicant. The district director shall include proof of service of a copy of such recommendation or request on the organization. The organization shall have 30 days in which to file a response with the Board to a recommendation by a district director that is other than favorable, along with proof of service of a copy of such response on the district director. If the Board approves a request for time to conduct an investigation, or in its discretion remands the application to the district director for further information, the organization shall be advised of the time granted for such purpose. The Service shall promptly forward the results of any investigation or inquiry to the Board, along with its recommendations for approval or disapproval and the reasons therefor, and proof of service of a copy of the submission on the organization. The organization shall have 30 days from the date of such service to file a response with the Board to any matters raised therein, with proof of service of a copy of the response on the district director. Requests for extensions of filing times must be submitted in writing with the reasons therefor and may be granted by the Board in its discretion. Oral argument may be heard before the Board in its discretion at such date and time as the Board may direct. The organization and Service shall be informed by the Board of the action taken regarding an application. Any recognized organization shall promptly notify the Board of any changes in its name, address, or public telephone number.

(c) *Withdrawal of recognition.* The Board may withdraw the recognition of any organization which has failed to maintain the qualifications required by § 292.2(a). Withdrawal of recognition may be accomplished in accordance with the following procedure:

(1) The Service, by the district director within whose jurisdiction the organization is located, may conduct an investigation into any organization it believes no longer meets the standards for recognition.

(2) If the investigation establishes to the satisfaction of the district director that withdrawal proceedings should be instituted, he shall cause a written statement of the grounds upon which withdrawal is sought to be served upon the organization, with notice to show cause why its recognition should not be withdrawn. The notice will call upon the organization to appear before a special inquiry officer for a hearing at a time and place stated, not less than 30 days after service of the notice.

(3) The special inquiry officer shall hold a hearing, receive evidence, make findings of fact, state his recommendations, and forward the complete record to the Board.

(4) The organization and the Service shall have the opportunity of appearing at oral argument before the Board at a time specified by the Board.

(5) The Board shall consider the entire record and render its decision. The order of the Board shall constitute the final disposition of the proceedings.

(d) *Accreditation of representatives.* An organization recognized by the Board under paragraph (b) of this section may apply for accreditation of persons of good moral character as its representatives. An organization may apply to have a representative accredited to practice before the Service alone or the Service and the Board (including practice before immigration judges). An application for accreditation shall fully set forth the nature and extent of the proposed representative's experience and knowledge of immigration and naturalization law and procedure and the category of accreditation sought. No individual may submit an application on his or her own behalf. An application shall be filed directly with the Board, along with proof of service of a copy of the application on the district director having jurisdiction over the area in which the requesting organization is located. The district director, within 30 days from the date of service, shall forward to the Board a recommendation for approval or disapproval of the application and the reasons therefor, or request a specified period of time in which to conduct an investigation or otherwise obtain relevant information regarding the applicant. The district director shall include proof of service of a copy of such recommendation or request on the organization. The organization shall have 30 days in which to file a response with the Board to a recommendation by a distrct director that is other than favorable, with proof of service of a copy of such response on the district director. If the Board approves a request for time to conduct an investigation, or in its discretion remands the application to the district director for further information, the organization shall be advised of the time granted for such purpose. The district director shall promptly forward the results of any investigation or inquiry to the Board, along with a recommendation for approval or disapproval and the reasons therefor, and proof of service of a copy of the submission on the organization. The organization shall have 30 days from the date of service to file a response with the Board to any matters raised therein, with proof or service of a copy of the response on the district director. Requests for extensions of filing times must be submitted in writing with the reasons therefor and may be granted by the Board in its discretion. Oral argument may be heard before the Board in its discretion at such date and time as the Board may direct. The Board may approve or disapprove an application in whole or in part and shall inform the organization and the district director of the action taken with regard to an application. The accreditation of a representative shall be valid for a period of three years only; however, the accreditation shall remain valid pending Board consideration of an application for renewal of accreditation if the application is filed at least 60 days before the third anniversary of the date of the Board's prior accreditation of the representative. Accreditation terminates when the Board's recognition of the organization ceases for any reason or when the representative's employment or other connection with the organization ceases. The organization shall promptly notify the Board of such changes.

(e) *Roster.* The Board shall maintain an alphabetical roster of recognized organizations and their accredited representatives. A copy of the roster shall be furnished to the Commissioner and he shall be advised from time to time of changes therein.

[40 FR 23272, May 29, 1975, as amended at 49 FR 44086, Nov. 2, 1984]

§ 292.3 Suspension or disbarment.

(a) *Grounds.* The Board, with the approval of the Attorney General, may suspend or bar from further practice an attorney or representative if it shall find that it is in the public interest to do so. The suspension or disbarment of an attorney or representative who is within one or more of the following categories shall be deemed to be in the public interest, for the purpose of this part, but the enumeration of the following categories does not establish the exclusive grounds for suspension or disbarment in the public interest:

(1) Who charges or receives, either directly or indirectly, any fee or compensation for services which may be deemed to be grossly excessive in relation to the services performed, or who, being an accredited representative of an organization recognized under § 1.1(j) of this chapter, charges or receives either directly or indirectly any fee or compensation for services rendered to any person, except that an accredited representative of such an organization may be regularly compensated by the organization of which he is an accredited representative;

(2) Who, with intent to defraud or deceive, bribes, attempts to bribe, coerces, or attempts to coerce, by any means whatsoever, any person, including a party to a case, or an officer or employee of the Service or Board, to commit an act or to refrain from performing an act in connection with any case;

(3) Who willfully misleads, misinforms, or deceives an officer or employee of the Department of Justice concerning any material and relevant fact in connection with a case;

(4) Who willfully deceives, misleads, or threatens any party to a case concerning any matter relating to the case;

(5) Who solicits practice in any unethical or unprofessional manner, including, but not limited to, the use of runners, or advertising his availability to handle immigration, naturalization, or nationality matters;

(6) Who represents, as an associate, any person who, known to him, solicits practice in any unethical or unprofessional manner, including, but not limited to, the use of runners, or advertising his availability to handle immigra-

tion, naturalization, or nationality matters;

(7) Who has been temporarily suspended, and such suspension is still in effect, or permanently disbarred, from practice in any court, Federal, State (including the District of Columbia), territorial, or insular;

(8) Who is temporarily suspended, and such suspension is still in effect, or permanently disbarred, from practice in a representative capacity before any executive department, board, commission, or other governmental unit, Federal, State (including the District of Columbia), territorial, or insular;

(9) Who, by use of his name, personal appearance, or any device, aids and abets any person to practice during the period of his suspension or disbarment, such suspension or disbarment being known to him;

(10) Who willfully made false and material statements or representations with respect to his qualifications or authority to represent others in any case;

(11) Who engages in contumelious or otherwise obnoxious conduct with respect to a case in which he acts in a representative capacity, which in the opinion of the Board, would constitute cause for suspension or disbarment if the case was pending before a court, or which, in such a judicial proceeding, would constitute a contempt of court;

(12) Who, having been furnished with a copy of any portion of the record in a case, willfully fails to surrender such copy upon final disposition of the case or upon demand, or willfully and without authorization makes and retains a copy of the material furnished;

(13) Who has been convicted of a felony, or, having been convicted of any crime is sentenced to imprisonment for a term of more than one year; or

(14) Who has falsely certified a copy of a document as being a true and complete copy of an original.

(b) *Procedure.* If an investigation established to the satisfaction of the regional commissioner that suspension or disbarment proceedings should be instituted, he shall cause a copy of the written charges to be served upon the attorney or representative, either personally or by registered mail, with notice to show cause within a specified time, not less than 30 days, why he should not be suspended or disbarred. The notice shall also advise that after answer has been made and the matter is at issue, a hearing before a representative of the regional commissioner may be requested. When a hearing is requested, the regional commissioner will specify the time and place therefor and specially designate the officer who shall preside and the officer who shall present the evidence. If an answer is not received within 3 days after expiration of the period prescribed to show cause, defense to the charges is waived. When a hearing is not requested in the answer, the regional commissioner shall forward the complete record to the Board with his recommendation. The attorney or representative, either with or without counsel, and the regional commissioner, by the service officer within the purview of § 3.1(e) of this chapter, shall have the privilege of appearing before the Board for oral argument at a time specified by the Board. The Board shall consider the record and render its decision. The order of the Board shall constitute the final disposition of the proceeding: *Provided, however,* That if the order is to suspend or disbar, or if any one of the circumstances described in § 3.1(h) of this chapter is present, the Board shall refer the record to the Attorney General for review of its decision and in such case the order of the Attorney General shall be the final determination of the proceeding. When the final order is for suspension or disbarment, the attorney or representative shall not thereafter be permitted to practice until authorized by the Board.

[23 FR 2672, Apr. 23, 1958, as amended at 23 FR 9124, Nov. 26, 1958; 34 FR 12213, July 24, 1969; 36 FR 11903, June 23, 1971]

§ 292.4 Appearances.

(a) *Form G-28.* An appearance shall be filed on Form G-28 by the attorney or representative appearing in each case. Thereafter, substitution may be permitted upon the written withdrawal of the attorney or representative of record or upon notification of the new attorney or representative. When an appearance is made by a person acting in a representative capacity, his personal appearance or signature shall constitute a representation that under the provisions of this chapter he is authorized and qualified to represent. Further proof of authority to act in a representative capacity may be required.

(b) *Availability of records.* During the time a case is pending, and except as otherwise provided in § 103.2(b) of this chapter, a party to a proceeding or his attorney or representative shall be permitted to examine the record of proceeding in a Service office. He may, in conformity with § 103.10 of this chapter, obtain copies of Service records or information therefrom and copies of documents or transcripts of evidence furnished by him. Upon request, he may in addition, be loaned a copy of the testimony and exhibits contained in the record of proceeding upon giving his receipt for such copies and pledging that it will be surrendered upon final disposition of the case or upon demand. If extra copies of exhibits do not exist, they shall not be furnished free on loan; however, they shall be made available for copying or purchase of copies as provided in § 103.10 of this chapter.

[23 FR 2673, Apr. 23, 1958, as amended at 32 FR 9633, July 4, 1967]

§ 292.5 Service upon and action by attorney or representative of record.

(a) *Representative capacity.* Whenever a person is required by any of the provisions of this chapter to give or be given notice; to serve or be served with any paper other than a warrant of arrest or a subpoena; to make a motion; to file or submit an application or other document; or to perform or waive the performance of any act, such notice, service, motion, filing, submission, performance, or waiver shall be given by or to, served by or upon, made by, or requested of the attorney or representative of record, or the person himself if unrepresented.

(b) *Right to representation.* Whenever an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney or representative who, except as otherwise specifically provided in Part 332 of this chapter, shall be permitted to examine or cross-examine such person and witnessess, to introduce evidence, to make objections which shall be stated succinctly and entered on the record, and to submit briefs. Provided, that nothing in this paragraph shall be construed to provide any applicant for admission in either primary or secondary inspection the right to representation, unless the applicant for admission has become the focus of a criminal investigation and has been taken into custody.

[37 FR 11471, June 8, 1972 and 45 FR 81733, Dec. 12, 1980; 46 FR 2025, Jan. 8, 1981]

§ 292.6 Interpretation.

Interpretations of this part will be made by the Board of Immigration Appeals, subject to the provisions of Part 3 of this chapter.

[32 FR 9633, July 4, 1967]

PART 292a—LISTING OF FREE LEGAL SERVICES PROGRAMS

Sec.
292a.1 Listing.
292a.2 Qualifications.
292a.3 Applications.
292a.4 Approval and denial of applications.
292a.5 Removal of an organization from list.

AUTHORITY: Sec. 103; 8 U.S.C. 1103, interpret or apply secs. 242 and 292 (8 U.S.C. 1252 and 1362).

SOURCE: 44 FR 4654, Jan. 23, 1979, unless otherwise noted.

§ 292a.1 Listing.

District directors and officers-in-charge shall maintain a current list of organizations qualified under this part and organizations recognized under § 292.2 of this chapter which have applied for listing under § 292a.3 of this part, located within their respective jurisdictions, for the purpose of providing aliens in deportation or exclusion proceedings with a list of such organizations as prescribed in this chapter.

[45 FR 43681, June 30, 1980]

§ 292a.2 Qualifications.

Except for an organization which is recognized under § 292.2 of this chapter and is available to render legal services in deportation or exclusion proceedings, an organization which seeks to have its name appear on the Service lists must show that it is established in the United States, provides free legal services to indigent aliens, has on its staff attorneys as defined in § 1.1(f) of this chapter or retains, at no expense to the alien, attorneys as defined in § 1.1(f) of this chapter, who are available to render such free legal services by representation in deportation or exclusion proceedings. Bar associations which provide a referral service of attorneys who render pro bono assistance to aliens in deportation or exclusion proceedings may also qualify to have their names appear on the Service list. Listing of an organization qualified under this part is not equivalent to recognition under § 292.2 of this chapter.

[44 FR 4654, Jan. 23, 1979, as amended at 45 FR 43681, June 30, 1980]

§ 292a.3 Applications.

Applications by organizations to qualify for listing under this part shall be submitted to the district director or officer-in-charge having jurisdiction over each area in which free legal services are being provided by the organization. The application shall be supported by a declaration signed by an authorized officer of the organization that the organization complies with all the qualifications set out in § 292a.2.

§ 292a.4 Approval and denial of applications.

District Directors or officers-in-charge shall have the authority to grant or deny an application submitted by an organization under this part, within their respective jurisdiction. If an application is denied, the applicant shall be notified of the decision in writing giving the grounds of such denial. Denial must be based on the failure of the organization to meet the qualifications specified in § 292a.2. The organization shall be advised of its right to appeal in accordance with §§ 103.1 and 103.3 of this chapter.

[50 FR 2040, Jan. 15, 1985]

§ 292a.5 Removal of an organization from list.

If the district director or officer-in-charge is satisfied that an organization listed under § 292a.1 does not meet the qualifications as set out in § 292a.2, he/she shall notify the organization concerned, in writing, of his/her intention to remove its name from the Service list. The organization may submit an answer within 30 days from the date the notice was served. If, after considering the answer by the organization, in the event an answer is submitted, the district director or officer-in-charge determines that the organization does not qualify under § 292a.2, he/she shall remove its name from the list. Removal must be based on the failure of the organization to meet the qualifications specified in § 292a.2 of this chapter. The organization shall be advised of its right to appeal in accordance with §§ 103.1 and 103.3 of this chapter. If an organization applies to the district director or officer-in-charge to have its name removed from the Service list, that request shall be honored.

[49 FR 41015, Oct. 19, 1984]

PART 293—DEPOSIT OF AND INTEREST ON CASH RECEIVED TO SECURE IMMIGRATION BONDS

Sec.
293.1 Computation of interest.
293.2 Interest rate.
293.3 Simple interest table.
293.4 Payment of interest.

AUTHORITY: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103. Interprets and applies sec. 293, 84 Stat. 413.

SOURCE: 36 FR 13677, July 23, 1971, unless otherwise noted.

§ 293.1 Computation of interest.

Interest shall be computed from the date of deposit occurring after April 27, 1966, or from the date cash deposited in the postal savings system ceased to accrue interest, to and including the date of withdrawal or date of breach of the immigration bond, whichever occurs first. For purposes of this section, the date of deposit shall be the date shown on the Receipt of Immigration Officer for the cash received as security on an immigration bond. The date of withdrawal shall be the date upon which the interest is certified to the Treasury Department for payment. The date of breach shall be the date as of which the immigration bond was concluded to have been breached as shown on Form 1-323, Notice—Immigration Bond Breached. In counting the number of days for which interest shall be computed, the day on which the cash was deposited, or the day which cash deposited in the postal savings system ceased to accrue interest, shall not be counted; however, the day of withdrawal or the day of breach of the immigration bond shall be counted. Interest shall be computed at the rate determined by the Secretary of the Treasury and set forth in § 293.2. The simple interest table in § 293.3 shall be utilized in the computation of interest under this part.

§ 293.2 Interest rate.

The Secretary of the Treasury has determined that effective from date of deposit occurring after April 27, 1966, the interest rate shall be 3 per centum per annum.

§ 293.3 Simple interest table.

Following is a simple interest table from which computation of interest at 3 per centum per annum on a principal of $1,000 for a fractional 365-day year may be derived by addition only. The interest is stated in the form of a decimal fraction of $1.

Days	*Interest*
1	0821 9178
2	1643 8356
3	2465 7534
4	3287 6712
5	4109 5890
6	4931 5068
7	5753 4246
8	6575 3424
9	7397 2602

Example: 3% on $500 for 93 days:

	Days	
	90	$7 3972 602
	3	2465 7534
Interest on $1,000	93	$7 6438 3554
Interest on $500		$3 82

§ 293.4 Payment of interest.

Interest shall be paid only at time of disposition of principal cash when the immigration bond has been withdrawn or declared breached.

PART 299—IMMIGRATION FORMS

Sec.
299.1 Prescribed forms.
299.2 Distribution of Service forms.
299.3 Forms available from the Superintendent of Documents.
299.4 Reproduction of forms by private parties.

Authority: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103, unless otherwise noted.

§ 299.1 Prescribed forms.

The forms listed below are hereby prescribed for use in compliance with the provisions of Subchapter A of this chapter and this Subchapter B. To the maximum extent feasible the forms used should bear the edition date shown or a subsequent edition date.

Form No., Title and Description

AR-4 (8-30-72)—Alien Registration Fingerprint Chart.
AR-11 (3-21-79)—Alien's Change of Address Card.
CDC 4.417 (11-74)—(Formerly HSM-240 or PHS-124) (Medical Certificate).
IAP-66 (10-78)—Certificate of Eligibility for Exchange Visitor Status.
FD-258 (4-25-72)—Applicant Card.
OF-157 (5-78)—Medical Examination of Applicants for United States Visas.
G-27 (9-30-82)—Request for Recognition to Represent before the Board of Immigration Appeals and the Immigration and Naturalization Service.
G-28 (10-25-79)—Notice of Entry of Appearance as Attorney or Representative.
G-296 (9-12-58)—Report of Violation.
G-297 (5-28-70)—Order to Seize Aircraft.
G-298 (9-12-58)—Public Notice of Seizure.
G-325A (10-1-82)—Biographic information.
G-325C (10-1-82)—Biographic information.
G-639 (6-12-82)—Freedom of Information Act/Privacy Act Request.
G-641 (5-5-83)—Application for Verification of Information from Immigration and Naturalization Records.
G-652 (2-1-78)—Affidavit of Identity.

G-658 (11-1-75)—Record of Information Disclosure (Privacy Act).

I-17 (4-4-83)—Petition for Approval of School for Attendance by Nonimmigrant Students.

I-17A (5-1-83)—Designated School Officials.

I-17B (5-1-83)—School System Attachment.

I-20AB (5-1-83)—Certificate of Eligibility For Nonimmigrant (F-1) Student Status—For Academic and Language Students.

I-20MN (5-1-83)—Certificate of Eligibility for Nonimmigrant (M-1) Student Status—For Vocational Students.

I-20ID (8-26-83)—Form I-20 ID Copy.

I-38 (7-25-77)—Decision of the Immigration Judge.

I-39 (9-22-78)—Decision of the Immigration Judge.

I-67 (9-18-58)—Inspection Record (Hungarian Parolee).

I-68 (10-20-80)—Canadian Border Boat Landing Card.

I-79 (5-15-70)—Notice of Intention to Fine under Immigration and Nationality Act.

I-90 (6-6-83)—Application by Lawful Permanent Resident Alien for Alien Registration Receipt Card, Form I-551.

I-92 (6-1-73)—Aircraft/Vessel Report.

I-94 (1-1-83)—Arrival-Departure Record.

I-95AB (9-1-64)—Crewman's Landing Permit.

I-99 (3-1-83)—Notice of Revocation and Penalty.

I-102 (5-5-83)—Application by Nonimmigrant Alien for Replacement of Arrival Document.

I-122 (5-4-79)—Notice to Applicant for Admission Detained for Hearing before Special Inquiry Officer.

I-126 (10-30-82)—Report of Status by Treaty Trader or Investor.

I-129B (7-1-83)—Petition to Classify Nonimmigrant as Temporary Worker or Trainee.

I-129F (3-1-83)—Petition to Classify Status of Alien Fiance or Fiancee for Issuance of Nonimmigrant Visa.

I-130 (5-5-83)—Petition to Classify Status of Alien Relative for Issuance of Immigrant Visa.

I-131 (5-5-83)—Application for Issuance or Extension of Permit to Reenter the United States.

I-134 (7-1-83)—Affidavit of Support.

I-138 (11-5-70)—Subpeona.

I-140 (5-5-83)—Petition to Classify Preference Status of Alien on Basis of Profession or Occupation.

I-141 (4-21-69)—Medical Certificate.

I-147 (10-30-83)—Notice of Temporary Exclusion from the United States.

I-151 (7-1-72)—Alien Registration Receipt Card.

I-171C (7-1-83)—Notice of Approval of Nonimmigrant Visa Petition or of Extension of Stay of H or L Alien.

I-175 (4-1-75)—Application for Nonresident Alien Canadian Border Crossing Card.

I-180 (9-1-81)—Notice of Voidance of Form I-186.

I-181 (3-1-83)—Memorandum of Creation of Record of Lawful Permanent Residence.

I-184 (4-1-58)—Alien Crewman Landing Permit and Identification Card.

I-185 (1-1-75)—Nonresident Alien Canadian Border Crossing Card.

I-186 (6-1-72)—Nonresident Alien Mexican Border Crossing Card.

I-190 (3-1-75)—Application for Nonresident Alien Mexican Border Crossing Card.

I-191 (5-5-83)—Application for Advance Permission to Return to Unrelinquished Domicile.

I-192 (5-5-83)—Application for Advance Permission to Enter as Nonimmigrant.

I-193 (5-5-83)—Application for Waiver of Passport and/or Visa.

I-197 (5-1-76)—U.S. Citizen Identification Card.

I-202 (11-15-79)—Authorization for Removal.

I-212 (5-5-83)—Application for Permission to Reapply for Admission into the United States after Deportation or Removal.

I-221 (7-1-73)—Order to Show Cause and Notice of Hearing.

I-221S (8-1-77)—Order to show Cause, Notice of Hearing, and Warrant for Arrest of Alien.

I-243 (9-27-75)—Application for Removal.

I-246 (3-31-83)—Application for Stay of Deportation.

I-256A (12-30-82)—Application for Suspension of Deportation.

I-259 (10-1-69)—Notice to Detain, Deport, Remove or Present Aliens.

I-259A (2-12-55)—Agreement by Transportation Line to Assume Responsibility for Removal of Aliens. (One-time basis.)

I-259B (4-1-70)—Agreement by Transportation Line to Assume Responsibility for Removal of Aliens. (Continuing basis.)

I-260 (6-1-73)—Notice to Take Testimony of Witness.

I-284 (12-20-66)—Notice to Transportation Line Regarding Deportation and Detention Expenses of Detained Alien.

I-286 (4-1-79)—Notification to Alien of Conditions of Release or Detention.

I-287 (4-10-72)—Special Care and Attention for Alien.

I-288 (2-20-62)—Notice to Transportation Line Regarding Deportation Expenses of Alien Completely Ready for Deportation.

I-290A (10-31-79)—Notice of Appeal to the Board of Immigration Appeals.

I-290B (10-3-83)—Notice of Appeal to Commissioner.

I-290C (9-30-66)—Notice of Certification.

I-292 (10-1-83)—Decision.

I-296 (12-15-82)—Notice to Alien Ordered Excluded by Immigration Judge.

I-305 (5-1-76)—Receipt of Immigration Officer—United States Bonds or Notes, or

Cash, Accepted as Security on Immigration Bond.

I-310 (4-16-62)—Bond for Payment of Sums and Fines Imposed under Immigration and Nationality Act (Term or Single Entry).

I-312 (4-15-76)—Designation of Attorney in Fact.

I-323 (3-15-77)—Notice—Immigration Bond Breached.

I-328 (6-5-74)—Order on Motion to Reopen.

I-342 (4-25-79)—Determination of the Immigration Judge with Respect to Custody.

I-351 (6-1-74)—Bond Riders.

I-352 (10-14-76)—Immigration Bond.

I-356 (9-27-75)—Request for Cancellation of Public Charge Bond.

I-391 (3-14-77)—Notice—Immigration Bond Cancelled.

I-408 (4-1-83)—Application to Pay off or Discharge Alien Crewman.

I-410 (5-1-83)—Receipt for Crew List.

I-418 (7-1-74)—Passenger List-Crew List.

I-420 (3-15-67)—Agreement (land-border) Between Transportation Line and United States.

I-421 (6-29-58)—Agreement (overseas) Between Transportation Line and United States.

I-425 (3-24-77)—Agreement for Preinspection at Places Outside United States.

I-426 (5-1-65)—Immediate and Continuous Transit Agreement Between a Transportation Line and United States of America (special direct transit procedure).

I-444 (4-1-83)—Mexican Border Visitors Permit.

I-485 (5-5-83)—Application for Status as Permanent Resident.

I-485A (3-25-81)—Application by Cuban Refugee for Permanent Residence.

I-485C (10-26-79)—Application for Creation of a Record of Lawful Admission for an Indochina Refugee.

I-486A (12-29-79)—Medical Examination and Immigration Interview.

I-503 (5-5-83)—Application for Change of Nonimmigrant Status.

I-508 (10-1-80)—Waiver of Rights, Privileges, Exemptions, and Immunities.

I-508F (6-1-70)—Waiver of Rights, Privileges, Exemptions, and Immunities (Under Sec. 247(b) of the Act and under the Convention between the United States of America and the French Republic with respect to Taxes on Income and Property).

I-509 (5-31-83)—Notice to Alien of Proposed Change from Lawfully Admitted for Permanent Residence to Nonimmigrant.

I-510 (11-15-82)—Guarantee of Payment.

I-512 (10-1-82)—Authorization for Parole or Conditional Entry of an Alien into the United States.

I-526 (12-22-79)—Request for Determination that Prospective Immigrant is an Investor.

I-538 (4-1-83)—Application by Nonimmigrant Student (F-1) for Extension of Stay, School Transfer or Permission to Accept or Continue Employment.

I-539 (5-5-83)—Application to Extend Time of Temporary Stay.

I-551 (Jan. 77)—Alien Registration Receipt Card.

I-566 (9-21-79)—Application for Employment by a (G-4) Spouse or Unmarried Son or Daughter of an Official of an International Organization.

I-570 (5-5-83)—Application for Issuance or Extension of Refugee Travel Document.

I-571 (11-1-79)—Refugee Travel Document.

I-586 (Apr. 77)—Nonresident Alien Border Crossing Card.

I-589 (3-1-81)—Request for Asylum in the United States.

I-590 (5-1-80)—Registration for Classification as Refugee.

I-591 (5-1-80)—Assurance by a United States Sponsor in Behalf of an Applicant for Refugee Status.

I-600 (5-5-83)—Petition to Classify Orphan as an Immediate Relative.

I-600A (5-5-83)—Application for Advance Processing of Orphan Petition.

I-601 (6-20-80)—Application for Waiver of Grounds of Excludability under Section 212 (g), (h), or (i) or the Immigration and Nationality Act.

I-602 (9-10-80)—Application by Refugee for Waiver of Grounds of Excludability.

I-612 (3-30-83)—Application for Waiver of the Foreign Residence Requirement of Section 212(e) of the Immigration and Nationality Act, as amended.

ICAO—International Civil Aviation Organization's General Declaration.

MA 7-50 (4-70)—Application for Alien Employment Certification. (Part I—Statement of Qualifications of Aliens (MA 7-50A)). (Part II—Job Offer for Alien Employment (MA 7-50B)).

7507 (3-69)—Bureau of Customs' General Declaration.

[49 FR 7103, Feb. 27, 1984]

§ 299.2 Distribution of Service forms.

The distribution of official Immigration and Naturalization applications, petitions, and related forms is as follows:

(a) Any officer or employee of the Service may issue official application or petition and related forms to the person for whose use the form is intended or to a person identified as a representative of the intended user in the quantity required for filing the application or petition and related forms.

(b) A small quantity, twenty-five (25) copies, may be issued to organizations an practitioners who make written request to the Regional Commissioner for the geographic location of the requester if such forms have not been made available for purchase from the Superintendent of Documents, Washington, D.C. 20402.

(c) Voluntary agencies (VOLAGS) participating in the Outreach Program of the Service who make written request to the Regional Commissioner for the geographic location of the requester may be furnished Service forms gratis in the volumes requested.

[43 FR 14304, Apr. 5, 1978, as amended at 45 FR 6777, Jan. 30, 1980; 45 FR 21611, Apr. 2, 1980]

§ 299.3 Forms available from Superintendent of Documents.

The immigration and naturalization forms indicated below may be obtained upon prepayment from the Superintendent of Documents, Washington, D.C. 20402.

Form No	GPO stock No. (S/N)	Price per 100/pad
G-28	S/N 027-002-00218-1	$6.50/100
G-325A	S/N 027-002-00277-6	13.00/100
G-641	S/N 027-002-00293-8	11.00/100
I-20AB	S/N 027-002-00285-7	15.00/100
I-20MN	S/N 027-002-00286-5	13.00/100
I-90	S/N 027-002-00301-2	7.00/100
I-92	S/N 027-002-00124-9	5.00/pad
I-94 (English)	S/N 027-002-00281-4	15.00/100
I-94 (Spanish)	S/N 027-002-00280-6	15.00/100
I-95AB	S/N 027-002-00081-1	11.50/100
I-129B	S/N 027-002-00300-4	9.00/100
I-129F	S/N 027-002-00290-3	9.00/100
I-130	S/N 027-002-00288-1	11.00/100
I-131	S/N 027-002-00289-0	13.00/100
I-134	S/N 027-002-00303-9	6.00/100
I-140	S/N 027-002-00295-4	11.00/100
I-408	S/N 027-002-00289-9	10.00/100
I-418	S/N 027-002-00142-7	7.00/pad
I-485	S/N 027-002-00294-6	8.50/100
I-506	S/N 027-002-00296-2	11.00/100
I-526	S/N 027-002-00235-1	9.50/100
I-538	S/N 027-002-00297-1	11.00/100
I-539	S/N 027-002-00229-7	11.00/100
I-600	S/N 027-002-00219-9	9.00/100
N-400	S/N 027-002-00291-1	11.00/100
N-402	S/N 027-002-00272-5	13.00/100
N-426	S/N 027-002-00192-3	12.00/100
N-600	S/N 027-002-00302-1	14.00/100

Prices are set by the Superintendent of Documents, Government Printing Office, and are subject to change without notice. A small supply of the above forms shall be set aside by immigration officers for free distribution and official use.

[49 FR 7104, Feb. 27, 1984]

§ 299.4 Reproduction of forms by private parties.

All forms required for compliance with the immigration and nationality regulations which have been made available for purchase by the Superintendent of Documents may be printed or otherwise reproduced by an appropriate duplicating process by private parties at their own expense. Forms printed or reproduced by private parties shall conform to the officially printed forms currently in use with respect to size, wording and language, arrangement, style and size of type, and paper specifications. Such forms shall be printed or otherwise duplicated in black ink or dye that will not fade or "feather" within 20 years.

[45 FR 6777, Jan. 30, 1980]

SUBCHAPTER C—NATIONALITY REGULATIONS

PART 306—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: VIRGIN ISLANDERS

Sec.
306.1 Persons eligible.
306.2 United States citizenship; when acquired.
306.11 Preliminary application form; filing; examination.
306.12 Renunciation forms; disposition.

AUTHORITY: Secs. 103, 306, 332, 66 Stat. 173, 237, 252; 8 U.S.C. 1103, 1406, 1443.

SOURCE: 22 FR 9812, Dec 6, 1957, unless otherwise noted

§ 306.1 Persons eligible.

Any Danish citizen who resided in the Virgin Islands of the United States on January 17, 1917, and in those Islands, Puerto Rico, or the United States on February 25, 1927, and who had preserved his Danish citizenship by making the declaration prescribed by Article VI of the treaty entered into between the United States and Denmark on August 4, 1916, and proclaimed January 25, 1917, may renounce his Danish citizenship before any court of record in the United States irrespective of his place of residence, in accordance with the provisions of this part.

§ 306.2 United States citizenship; when acquired.

Immediately upon making the declaration of renunciation as described in § 306.12 the declarant shall be deemed to be a citizen of the United States. No certificate of naturalization or of citizenship shall be issued by the clerk of court to any person obtaining, or who has obtained citizenship solely under section 306(a)(1) of the Immigration and Nationality Act or under section 1 of the act of February 25, 1927.

§ 306.11 Preliminary application form; filing; examination.

A person of the class described in § 306.1 shall submit to the Service on Form N-350 preliminary application to renounce Danish citizenship, in accordance with the instructions contained therein. The applicant shall be notified in writing when and where to appear before a representative of the Service for examination as to his eligibility to renounce Danish citizenship and for assistance in filing the renunciation.

§ 306.12 Renunciation forms; disposition.

The renunciation shall be made and executed by the applicant under oath, in duplicate, on Form N-351 and filed in the office of the clerk of court. The usual procedural requirements of the Immigration and Nationality Act shall not apply to proceedings under this part. The fee shall be fixed by the court or the clerk thereof in accordance with the law and rules of the court, and no accounting therefor shall be required to be made to the Service. The clerk shall retain the original of Form N-351 as the court record and forward the duplicate to the district director exercising administrative naturalization jurisdiction over the area in which the court is located.

PART 312—EDUCATIONAL REQUIREMENTS FOR NATURALIZATION

Sec.
312.1 Literacy requirements.
312.2 Knowledge of history and Government of the United States.
312.3 Failure to meet educational and literacy requirements.

AUTHORITY: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103. Interpret or apply 312, 332, 66 Stat. 239, 252; 8 U.S.C. 1423, 1443.

§ 312.1 Literacy requirements.

The ability of a petitioner to speak English shall be determined from answers to questions normally asked in the course of the preliminary investigation and preliminary examination. A petitioner's ability to read and write English shall be tested by excerpts from one or more parts of the Federal Textbooks on Citizenship written at the elementary literacy level. These textbooks may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, and are available at certain public educational institutions. The matter written by a petitioner shall be retained in his file.

[32 FR 9633, July 4, 1967]

§ 312.2 Knowledge of history and Government of the United States.

The test of a petitioner's knowledge of the history and form of government of the United States shall be given in the English language unless he is exempt from speaking English. The scope of the testing shall be limited primarily to subject matters covered in the Federal Textbooks on Citizenship. In choosing the subject matters and in phrasing questions, due consideration shall be given to the extent of the petitioner's education, background, age, length of residence in the United States, opportunities available and efforts made to acquire the requisite knowledge, and any other elements or factors relevant to an appraisal of the adequacy of his knowledge and understanding.

[32 FR 9633, July 4, 1967]

§ 312.3 Failure to meet educational and literacy requirements.

A petitioner for naturalization who fails to pass the English literacy or educational tests at the preliminary investigation or preliminary examination shall be afforded a second opportunity to pass the tests before the petition for naturalization is calendared for final hearing and, if needed, a final opportunity at the time of final hearing before the naturalization court.

[38 FR 8592, Apr. 4, 1973]

PART 316a—RESIDENCE, PHYSICAL PRESENCE AND ABSENCE

Sec.
316a.1 Absence for which benefits of section 307(b) or 308 of the Nationality Act of 1940 have been granted; effect on continuous residence requirement.
316a.2 American institutions of research.
316a.3 Public international organizations of which the United States is a member by treaty or statute.
316a.4 International Organizations Immunities Act designations.

Sec.
316a.21 Application for benefits with respect to absences; appeal.

AUTHORITY: Secs. 103, 316, 317, 332, 405, 66 Stat. 173, 242, 243, 252, 280; 8 U.S.C. 1103, 1427, 1428, 1443, 1101 note, unless otherwise noted.

§ 316a.1 Absence for which benefits of section 307(b) or 308 of the Nationality Act of 1940 have been granted; effect on continuous residence requirement.

No absence from the United States which commenced prior to the effective date of the Immigration and Nationality Act, whether or not it continued beyond that date, in connection with which an application for exemption from the usual residence requirements under the naturalization laws was made under section 307(b) or 308 of the Nationality Act of 1940 and acted upon favorably by the Attorney General, shall be regarded as having broken the continuity of residence required by section 316(a) of the Immigration and Nationality Act, provided that satisfactory proof that the absence was for a purpose described in section 307(b) or 308 of the Nationality Act of 1940, is presented to the court, and provided that the provisions of section 316(a) of the Immigration and Nationality Act are otherwise complied with.

[22 FR 9813, Dec. 6, 1957]

§ 316a.2 American institutions of research.

The following-listed organizations have been determined to be American Institutions of research recognized by the Attorney General:

Albert Einstein College of Medicine of Yeshiva University (only in relationship to its research programs).
American Friends of the Middle East, Inc.
American Institutes of Research in the Behavioral Sciences (only in relationship to research projects abroad).
American Universities Field Staff, Inc.
American University, The, Cairo, Egypt.
American University of Beirut (Near East College Associations).
Arctic Institute of North America, Inc.
Armour Research Foundation of Illinois Institute of Technology.
Asia Foundation, The (formerly Committee for a Free Asia, Inc.).

Association of Universities for Research in Astronomy (AURA, Inc.), Tucson, Arizona.
Atomic Bomb Casualty Commission.
Bermuda Biological Station for Research, Inc.
Bernice P. Biship Museum of Polynesian Antiquities, Ethnology and Natural History at Honolulu, Hawaii.
Brookhaven National Laboratory, Associated Universities, Inc.
Brown University (Department of Engineering), Providence, R.I.
Buffalo Eye Bank and Research Society, Inc.
Burma Office of Robert N. Nathan Associates, Inc.
California State University at Long Beach, Department of Geological Sciences.
Carleton College (Department of Sociology and Anthropology), Northfield, Minnesota.
Center of Alcohol Studies, Laboratory of Applied Biodynamics of Yale University.
Central Registry of Jewish Losses in Egypt.
College of Engineering, University of Wisconsin.
College of Medicine, State University of New York.
Colorado State University (Research Foundation), Fort Collins, Colo.
Colorado University (International Economic Studies Center), Boulder, Colo.
Columbia University (Parker School of Foreign and Comparative Law) and (Faculty of Pure Science), New York, N.Y.
Cornell University (International Agricultural Development, University of the Philippines-Cornell University Graduate Education Program).
Dartmouth Medical School.
Department of French, Department of Scandinavian Languages, and Department of Near Eastern Languages of the University of California, Berkeley, Calif.
Duke University.
Environmental Research Laboratory of the University of Arizona.
Fletcher School of Law and Diplomacy, Medford, Mass.
Ford Foundation, 477 Madison Avenue, New York, N.Y.
Free Europe, Inc. (formerly Free Europe Committee, Inc.; National Committee for a Free Europe (including Radio Free Europe)).
Georgetown University.
George Williams Hooper Foundation, San Francisco Medical Center, University of California, San Francisco, Calif.
Gorgas Memorial Institute of Tropical and Preventive Medicine, Inc., and its operating unit, the Gorgas Memorial Laboratory.
Graduate Faculty of Political and Social Science Division of the New School for Social Research, New York, N.Y.
Harvard Institute for International Development.
Harvard-Yenching Institute.
Humboldt State University, School of Natural Resources, Wildlife Management Department.
Institute for Development Anthropology, Inc.
Institute of International Education, Inc.
Institute of International Studies, University of California, Berkeley, Calif.
International Center for Social Research, New York, N.Y.
International Development Foundation, Inc.
International Development Services, Inc.
International Research Associates, Inc.
Inter-University Program for Chinese Language Studies (formerly Stanford Center for Chinese Studies) in Taipei, Taiwan.
Iran Foundation, Inc., The.
Kossuth Foundation, Inc., The, New York, N.Y.
Louisiana State University.
Massachusetts Institute of Technology.
Michigan State University, East Lansing, Michigan.
Natural Science Foundation, Philadelphia, Pennsylvania.
New York Zoological Society.
Paderewski Foundation, Inc.
Peabody Museum of Natural History of Yale University.
People to People Health Foundation, Inc., The (only in relationship to the scientific research activities that will be carried on abroad by the medical staff of the SS "Hope").
Pierce College (in relationship to research by an instructor, Department of Psychology), Athens, Greece.
Population Council, The, New York, N.Y.
Radio Liberty Committee, Inc. (formerly American Committee for Liberation, Inc.; American Committee for Liberation of the Peoples of Russia, Inc.; American Committee for Liberation from Bolshevism, Inc.).
Rockefeller Foundation.
School of International Relations of the University of Southern California.
SIRIMAR (Societa Internazionale Recerche Marine) Division, Office of the Vice President for Research, Pennsylvania State University.
Social Science Research Council.
Stanford Electronic Laboratories, Department of Electrical Engineering, School of Engineering, Stanford University, Stanford, Calif.
Stanford Research Institute, Menlo Park, Calif.
Stanford University (the George Vanderbilt Foundation), Stanford, Calif.
Syracuse University.
Tulane University Graduate School.
Tulane University Medical School.

University of Alabama Medical Center.
University of Chicago (as a participant in the International Cooperation Administration Program No. W-74 only).
University of Colorado (Department of History), Boulder, Colo.
University of Connecticut, College of Liberal Arts and Science (Department of Germanic and Slavic Languages).
University of Hawaii, Honolulu, Hawaii.
University of Ilinois at Urbana-Champaign, Austria-Illinois Exchange Program.
University of Kansas, Office of International Programs.
University of Michigan (School of Natural Resources), Ann Arbor, Mich.
University of Minnesota, Department of Plant Pathology (in relationship to research project abroad).
University of Nebraska Mission in Columbia, South America.
University of North Carolina at Chapel Hill.
University of Notre Dame, Notre Dame, Ind.
University of Puerto Rico.
University of Washington (Department of Marketing, Transportation, and International Business) and (The School of Public Health and Community Medicine), Seattle, Wash.
Wenner-Gren Foundation for Anthropological Research, Inc.
Williams College, Economic Department, Williamstown, Mass.

[32 FR 9634, July 4, 1967]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 316a.2, see List of CFR Sections Affected in the Finding Aids section of this volume.

§ 316a.3 Public international organizations of which the United States is a member by treaty or statute.

The following-listed organizations have been determined to be public international organizations of which the United States is a member by treaty or statute:

The North Atlantic Treaty Organization.
United Nations and all agencies and organizations which are a part thereof.

[32 FR 9634, July 4, 1967; 38 FR 29878, Oct. 30, 1973]

§ 316a.4 International Organizations Immunities Act designations.

The following public international organizations are entitled to enjoy the privileges, exemptions, and immunities provided for in the International Organizations Immunities Act, and are considered as public international organizations of which the United States is a member by treaty or statute within the meaning of section 316(b) of the Act and as public international organizations in which the United States participates by treaty or statute within the meaning of section 319(b) of the Act:

African Development Bank (E.O. 12403, Feb. 8, 1983).
African Development Fund (E.O. 11977, Mar. 14, 1977).
Asian Development Bank (E.O. 11334, Mar. 7, 1967).
Caribbean Organization (E.O. 10983, Dec. 30, 1961).
Criminal Police Organization (E.O. 12425, 6/16/83).
Customs Cooperation Council (E.O. 11596, June 5, 1971).
European Space Research Organization (ESRO) (E.O. 11760, Jan. 17, 1974).
Food and Agriculture Organization, The (E.O. 9698, Feb 19, 1946).
Great Lakes Fishery Commission (E.O. 11059, Oct. 23, 1962).
Inter-American Defense Board (E.O. 10228, Mar. 26, 1951).
Inter-American Development Bank (E.O. 10873, Apr. 8, 1960).
Inter-American Institute for Cooperation on Agriculture (E.O. 9751, 7/11/46).
Inter-American Statistical Institute (E.O. 9751, July 11, 1946).
Inter-American Tropical Tuna Commission (E.O. 11059, Oct. 23, 1962).
Intergovernmental Committee for European Migration (formerly the Provisional Intergovernmental Committee for the Movement of Migrants from Europe) (E.O. 10335, Mar. 28, 1952).
Intergovernmental Maritime Consultative Organization (E.O. 10795, Dec. 13, 1958).
International Atomic Energy Agency (E.O. 10727, Aug. 31, 1957).
International Bank for Reconstruction and Development (E.O. 9751, July 11, 1946).
International Centre for Settlement of Investment Disputes (E.O. 11966, 1/19/77).
International Civil Aviation Organization (E.O. 9863, May 31, 1947).
International Coffee Organization (E.O. 11225, May 22, 1965).
International Cotton Advisory Committee (E.O. 9911, Dec. 19, 1947).
International Development Association (E.O. 11966, 1/19/77).
International Fertilizer Development Center (E.O. 11977, Mar. 14, 1977).
International Finance Corporation (E.O. 10680, Oct. 2, 1956).
International Food Policy Research Institute (E.O. 12359, 4/22/82).
International Hydrographic Bureau (E.O. 10769, May 29, 1958).

International Institute for Cotton (E.O. 11283, 5/27/66).

International Joint Commission—United States and Canada (E.O. 9972, June 25, 1948).

International Labor Organization, The (functions through staff known as The International Labor Office) (E.O. 9698, Feb. 19, 1946).

International Maritime Satellite Organization (E.O. 12238, 9/12/80).

International Monetary Fund (E.O. 9751, July 11, 1946).

International Pacific Halibut Commission (E.O. 11059, Oct. 23, 1962).

International Secretariat for Volunteer Service (E.O. 11363, July 20, 1967).

International Telecommunication Union (E.O. 9863, May 31, 1947).

International Telecommunications Satellite Organization (INTELSAT) (E.O. 11718, May 14, 1973).

International Wheat Advisory Committee (E.O. 9823, Jan. 24, 1947).

Multinational Force and Observers (E.O. 12359, 4/22/82).

Organization for European Economic Cooperation (E.O. 10133, June 27, 1950) (Now known as Organization for Economic Cooperation and Development; 28 FR 2959, Mar. 26, 1963).

Organization of African Unity (OAU) (E.O. 11767, Feb. 19, 1974).

Organization of American States (includes Pan American Union) (E.O. 10533, June 3, 1954).

Pan American Health Organization (includes Pan American Sanitary Bureau) (E.O. 10864, Feb. 18, 1960).

Preparatory Commission of the International Atomic Energy Agency (E.O. 10727, Aug. 31, 1957).

Preparatory Commission for the International Refugee Organization and its successor, the International Refugee Organization (E.O. 9887, Aug. 22, 1947).

South Pacific Commission (E.O. 10086, Nov. 25, 1949).

United International Bureau for the Protection of Intellectual Property (BIRPI) (E.O. 11484, Sept. 29, 1969).

United Nations, The (E.O. 9698, Feb. 19, 1946).

United Nations Educational, Scientific, and Cultural Organizations (E.O. 9863, May 31, 1947).

Universal Postal Union (E.O. 10727, Aug. 31, 1957).

World Health Organization (E.O. 10025, Dec. 30, 1948).

World Intellectual Property Organization (E.O. 11866, 6/18/75).

World Meteorological Organization (E.O. 10676, Sept. 1, 1956).

[32 FR 9634, July 4, 1967, as amended at 32 FR 11628, Aug. 11, 1967; 32 FR 13756, Oct. 3, 1967; 34 FR 1008, Jan 23, 1969; 34 FR 18086, Nov. 8, 1969; 36 FR 16636, June 17, 1971; 38 FR 16633, June 25, 1973; 39 FR 10885, Mar. 22, 1974; 39 FR 12336, Apr. 5, 1974; 48 FR 43162, Sept. 22, 1983; 49 FR 23335, June 6, 1984]

§ 316a.21 Application for benefits with respect to absences; appeal.

(a) An application for the residence benefits of section 316(b) of the Immigration and Nationality Act to cover an absence from the United States for a continuous period of one year or more shall be submitted to the Service on Form N-470 in accordance with the instructions contained therein. The application shall be filed either before or after the applicant's employment commences but before the applicant has been absent from the United States for a continuous period of one year. There shall be submitted with the application a fee of $10.00.

(b) An application for the residence and physical presence benefits of section 317 of the Immigration and Nationality Act to cover any absences from the United States, whether before or after December 24, 1952, shall be submitted to the Service on Form N-470 in accordance with the instructions contained therein, either before or after the absence from the United States, or the performance of the functions or the services described in that section. There shall be submitted with the application a fee of $10.00.

(c) The applicant shall be notified of the approval of the application on Form N-472 and, if the application is denied, of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter.

(d) Approval of Form N-470 under section 316(b) of the Act shall cover the spouse and unmarried dependents of the applicant who are residing abroad as members of the applicant's household during the period covered by the application. Form N-472 shall be notated to identify those family members so covered.

(Sec. 316 of the I&N Act, as amended; 8 U.S.C. 1426)

[22 FR 9813, Dec. 6, 1957, as amended at 31 FR 14629, Nov. 17, 1966; 47 FR 10777, Mar. 12, 1982]

PART 318—PENDING DEPORTATION PROCEEDINGS

AUTHORITY: Secs. 103, 242, 318, 332, 66 Stat. 173, 208, as amended, 244, 252; 8 U.S.C. 1103, 1252, 1429, 1443.

§ 318.1 Warrant of arrest.

For the purposes of section 318 of the act, an order to show cause issued under Part 242 of this chapter shall be regarded as a warrant of arrest.

[22 FR 9813, Dec. 6, 1957]

PART 319—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SPOUSES OF UNITED STATES CITIZENS

Sec.
319.1 Person living in marital union with United States citizen spouse.
319.2 Person whose United States citizen spouse is employed abroad.
319.3 Persons continuously employed for 5 years by United States organizations engaged in disseminating information and surviving spouses of United States citizens who died during a period of honorable service in an active duty status in the Armed Forces of the United States.
319.4 Public international organizations in which the U.S. participates by treaty or statute.
319.5 United States nonprofit organizations engaged abroad in disseminating information which significantly promotes U.S. interests.
319.11 Procedural requirements.

AUTHORITY: Secs. 103, 319, 332, 66 Stat. 173, 244, 252; 8 U.S.C. 1103, 1430, 1443.

§ 319.1 Person living in marital union with United States citizen spouse.

A person of the class described in section 319(a) of the Immigration and Nationality Act shall establish his good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition to the good order and happiness of the United States for the period of three years immediately preceding the date of filing the petition and from that date to the time of admission to citizenship.

[22 FR 9813, Dec. 6, 1957]

§ 319.2 Person whose United States citizen spouse is employed abroad.

A person of the class described in section 319(b) of the Immigration and Nationality Act shall establish an intention in good faith, upon naturalization, to reside abroad with the United States citizen spouse and to take up residence in the United States immediately upon the termination of the employment abroad of such spouse. It shall be established that at the time of filing of the petition for naturalization such person was in the United States pursuant to a lawful admission for permanent residence and that he is a person of good moral character, attached to the principles of the Constitution of the United States and well disposed to the good order and happiness of the United States.

[22 FR 9813, Dec. 6, 1957]

§ 319.3 Persons continuously employed for 5 years by United States organizations engaged in disseminating information and surviving spouses of United States citizens who died during a period of honorable service in an active duty status in the Armed Forces of the United States.

A person of the class described in section 319(c) or section 319(d) of the Act shall establish that, at the time of filing of the petition for naturalization, he is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

[33 FR 11354, Aug. 9, 1968, as amended at 39 FR 3551, Jan. 28, 1974]

§ 319.4 Public international organizations in which the U.S. participates by treaty or statute.

Organizations designated by the President as international organizations pursuant to the International Organizations Immunities Act are considered as public international organizations in which the United States participates by treaty or statute within the meaning of section 319(b) or the Act. For a list of such organizations see § 316a.4 of this chapter. In addition, the following have been determined to be public international organizations within the purview of section 319(b) of the Act:

The North Atlantic Treaty Organization.

The United Nations and all agencies and organizations which are a part thereof.

The regional commissioner shall forward a copy of each decision regarding a public international organization to the Assistant Commissioner, Naturalization.

[32 FR 9635, July 4, 1967. Redesignated at 33 FR 255, Jan. 9, 1968]

§ 319.5 United States nonprofit organizations engaged abroad in disseminating information which significantly promotes U.S. interests.

The following have been determined to be U.S. incorporated nonprofit organizations principally engaged in conducting abroad through communications media the dissemination of information which significantly promotes U.S. interests abroad within the purview of section 319(c) of the Act:

Free Europe, Inc.; formerly Free Europe Committee, Inc., National Committee for a Free Europe (including Radio Free Europe)).

Radio Liberty Committee, Inc. (formerly American Committee for Liberation, Inc.; American Committee for Liberation of the Peoples of Russia, Inc.; American Committee for Liberation from Bolshevism, Inc.)

[33 FR 255, Jan. 9, 1968]

§ 319.11 Procedural requirements.

A person described in §§ 319.1, 319.2, and 319.3 shall submit to the Service an application to file a petition for naturalization on Form N-400 in accordance with the instructions contained therein. The petition for naturalization of such person shall be filed on Form N-405, in duplicate.

[22 FR 9813, Dec. 6, 1957, as amended at 33 FR 255, Jan. 9, 1968]

PART 322—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: CHILDREN OF CITIZEN PARENT

Authority: Sec. 7 of Pub. L. 95-417, 92 Stat. 918; sec. 103; 8 U.S.C. 1103. Interpret or apply secs. 322 and 332; 8 U.S.C. 1433 and 1443.

§ 322.1 Petition.

An application to file a petition for naturalization under section 322 of the Act in behalf of a child shall be submitted on Form N-402. The petition for naturalization shall be filed on Form N-407, in duplicate. A child under this part is not required to establish any particular period of residence in a State.

[43 FR 56015, Nov. 30, 1978]

PART 324—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: WOMEN WHO HAVE LOST UNITED STATES CITIZENSHIP BY MARRIAGE

Sec.
324.11 Former citizen at birth or by naturalization.
324.12 A woman, citizen of the United States at birth, who lost or is believed to have lost citizenship by marriage and whose marriage has terminated.
324.13 Women restored to United States citizenship by the act of June 25, 1936, as amended by the act of July 2, 1940.
324.14 Former citizen of the United States whose naturalization by taking the oath is authorized by a private law.
324.15 Certificate by examiner when petitioner is entitled to an immediate hearing.

Authority: Secs. 103, 324, 332, 337, 405, 66 Stat. 173, 246, 252, 258, 280; 8 U.S.C. 1103, 1435, 1443, 1448, 1101 note.

§ 324.11 Former citizen at birth or by naturalization.

A former citizen of the United States of the class described in section 324(a) of the Act shall submit an application to file a petition for naturalization on Form N-400 and supplemental Form N-400A. The petition for naturalization of such person shall be filed on Form N-405, in duplicate. There shall be inserted after averment 13 of Form N-405 at the time of the filing an averment of the petitioner's loss of citizenship as follows:

(If petition filed under section 324(a)) I was formerly a citizen of the United States who lost citizenship by or through marriage to an alien. I have not acquired another na-

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tionality by an affirmative act other than by marriage. If not lawfully admitted for permanent residence, I have resided continuously in the United States since the date of my marriage.

[31 FR 14078, Nov. 3, 1966, as amended at 31 FR 14629, Nov. 17, 1966]

§ 324.12 A woman, citizen of the United States at birth, who lost or is believed to have lost citizenship by marriage and whose marriage has terminated.

A woman, formerly a citizen of the United States at birth, who applies in the United States to regain her citizenship under section 324(c) of the act, shall submit a preliminary application to take the oath of allegiance on Form N-401. The eligibility of the applicant to take the oath shall be investigated by a member of the Service who shall make an appropriate recommendation to the naturalization court. The application to the court shall be made on Form N-408, in triplicate. The original shall be retained as a part of the court record and numbered consecutively in a separate series, and the duplicate forwarded to the appropriate district director with duplicates of other naturalization papers. After the applicant has taken the oath of allegiance, the clerk of court shall furnish the applicant, upon demand, the triplicate copy of Form N-408, properly certified, for which a fee not exceeding $5.00 may be charged. No charge shall be made by the clerk of court for the filing of Form N-408. If the applicant does not demand the triplicate Form N-408, it shall be transmitted to the appropriate district director with the duplicate thereof. The oath of allegiance may be taken before any diplomatic or consular officer of the United States, abroad, in accordance with such regulations as may be prescribed by the Secretary of State.

[23 FR 5819, Aug. 1, 1958]

§ 324.13 Women restored to United States citizenship by the act of June 25, 1936, as amended by the act of July 2, 1940.

A woman who was restored to citizenship by the act of June 25, 1936, as amended by the act of July 2, 1940, but who failed to take the oath of allegiance prescribed by the naturalization laws prior to December 24, 1952, may take the oath of allegiance prescribed by Part 337 before any naturalization court on or after December 24, 1952. Such woman shall comply with the procedural requirements of § 324.12 except that a fee not exceeding $1.00 may be charged if the woman demands the triplicate copy of Form N-408, properly certified.

[22 FR 9814, Dec. 6, 1957]

§ 324.14 Former citizen of the United States whose naturalization by taking the oath is authorized by a private law.

A former citizen of the United States whose naturalization by taking the oath prescribed in section 337 of the Immigration and Nationality Act before any naturalization court is authorized by a private law shall submit to the Service a preliminary application on Form N-401. The application to the court shall be made on Form N-408, in triplicate, amended as set forth in § 332a.13 of this chapter. A copy of the private law shall be attached to Form N-408. The provisions of § 324.12 relating to fees and the disposition of Form N-408 apply equally to a proceeding under this section.

[23 FR 2673, Apr. 23, 1958]

§ 324.15 Certificate by examiner when petitioner is entitled to an immediate hearing.

The officer or employee conducting the preliminary investigation shall execute a certificate of examination on Form N-440, in duplicate, for attachment to the original and duplicate petitions for naturalization filed under section 324(a) of the Act.

[25 FR 13686, Dec. 24, 1960]

PART 327—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WHO LOST UNITED STATES CITIZENSHIP THROUGH SERVICE IN ARMED FORCES OF FOREIGN COUNTRY DURING WORLD WAR II

AUTHORITY: Secs. 103, 327, 332, 344, 66 Stat. 173, 248, 252, 264; 8 U.S.C. 1103, 1438, 1443, 1455.

§ 327.1 Petition.

A former citizen of the United States of the class described in section 327 of the Act shall submit an application to file a petition for naturalization Form N-400 and supplemental Form N-400A. The petition for naturalization of such person shall be filed on Form N-405 in duplicate. There shall be inserted after averment 13 a Form N-405 at the time of the filing an averment of the petitioner's loss of citizenship, as follows:

> (If petition filed under section 327) While a citizen of the United States, I entered the armed forces of (country) whereby I lost my U.S. citizenship by reason of entering or serving in such armed forces by or taking an oath or obligation in connection therewith.

Upon naturalization, two copies of the original petition for naturalization containing the oath of allegiance duly attested and certified by the clerk, shall be forwarded by the clerk to the district director. The district director shall file one copy with the service record and transmit the other copy to the Department of State. The petitioner shall pay to the clerk of the naturalization court at the time the petition is filed a fee of $25, unless the petitioner is exempt therefrom under section 344(h) of the Immigration and Nationality Act or has been granted a waiver of the fee under the provisions of § 103.7(c) of this chapter.

[31 FR 14079, Nov. 3, 1966, as amended at 31 FR 14629, Nov. 17, 1966; 37 FR 14289, June 19, 1972]

PART 328—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: PERSONS WITH THREE YEARS SERVICE IN ARMED FORCES OF THE UNITED STATES

Sec.
328.1 Continuous service.
328.2 Service not continuous.
328.3 Petition.

AUTHORITY: Secs. 103, 328, 332, 66 Stat. 173, 249, 252; 8 U.S.C. 1103, 1439, 1443.

§ 328.1 Continuous service.

A person of a class described in section 328(a) of the act, whose service in the armed forces of the United States aggregating three years has been continuous, shall establish that he is in the United States pursuant to a lawful admission for permanent residence, whether or not such admission occurred before or after service in the armed forces, if the petition is filed within six months after termination of such service. Such person shall establish his good moral character, attachment to the principles of the Constitution, and favorable disposition to the good order and happiness of the United States, from the date of termination to the date of his admission to citizenship.

[24 FR 2584, Apr. 3, 1959]

§ 328.2 Service not continuous.

A person of the class described in section 328(c) of the Act whose service aggregating three years was not continuous shall establish the qualifications prescribed in that section during the periods when not serving in the armed forces.

[47 FR 10777, Mar. 12, 1982]

§ 328.3 Petition.

A person of the class described in section 328 of the Act must submit an application to file a petition for naturalization on Form N-400. The duly authenticated copies of the records and the certified statements of the executive departments described in section 328 of the Act shall be requested by the applicant on Form N-426, prepared in triplicate, and submitted to the Service with the Form N-400. Any person of the class described in § 328.1 or § 328.2 of this part may file his/her petition for naturalization in any naturalization court regardless of place of residence. The petition for naturalization must be filed, in duplicate, on Form N-405.

[47 FR 10778, Mar. 12, 1982]

PART 329—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: VETERANS OF THE UNITED STATES ARMED FORCES WHO SERVED DURING WORLD WAR I OR WORLD WAR II OR ENLISTED UNDER ACT OF JUNE 30, 1950, AS AMENDED

Sec.
329.1 World War I.
329.2 Petition.

AUTHORITY: Secs. 103, 329, 332, 402(e), 66 Stat. 173, 250, 252, 276; 8 U.S.C. 1103, 1440 and note, 1443.

§ 329.1 World War I.

For the purpose of section 329 of the act, World War I commenced on April 6, 1917, and ended on November 11, 1918.

[23 FR 5819, Aug. 1, 1958]

§ 329.2 Petition.

A person of the class described in section 329 or 402(e) of the act shall submit an application to file a petition for naturalization on Form N-400. The certification required by section 329(b)(4) of the act to prove service shall be requested by the applicant on Form N-426, in triplicate, and submitted to the Service with Form N-400. The petition for naturalization shall be filed on Form N-405, in duplicate, in any naturalization court, regardless of the residence of the petitioner.

[23 FR 5819, Aug. 1, 1958, as amended at 31 FR 14078, Nov. 3, 1966]

PART 330—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: SEAMEN

AUTHORITY: Secs. 103, 330, 332, 66 Stat. 173, 251, 252; 8 U.S.C. 1103, 1441, 1443.

§ 330.1 Petition.

A person of the class described in section 330(a)(1) of the act shall submit an application to file a petition for naturalization on Form N-400 and supplemental Form N-400B. The petition for naturalization shall be filed on Form N-405, in duplicate, in a naturalization court having jurisdiction over the petitioner's place of residence. The duly authenticated copies of the records or certificates described in section 330(a)(1) of the act shall be accepted as proof of good moral character, attachment to the principles of the Constitution, and favorable disposition to the good order and happiness of the United States for that portion of the service performed within the period of five years immediately preceding the date of the petition.

[23 FR 5819, Aug. 1, 1958, as amended at 31 FR 14078, Nov. 3, 1966]

PART 332—PRELIMINARY INVESTIGATION OF APPLICANTS FOR NATURALIZATION AND WITNESSES

Sec.
332.11 Investigation preliminary to filing petition for naturalization.
332.13 Use of record of preliminary investigation.

AUTHORITY: Sec. 332 of the I&N Act, as amended; 8 U.S.C. 1443.

§ 332.11 Investigation preliminary to filing petition for naturalization.

(a) *Scope of investigation.* Whenever practicable, each applicant for naturalization shall appear in person before an officer of the Service authorized to administer oaths or affirmations, prior to the filing of a petition for naturalization, and give testimony under oath or affirmation concerning the applicant's mental and moral qualifications for citizenship, attachment to the principles of the Constitution, and disposition to the good order and happiness of the United States, and the other qualifications to become a naturalized citizen as required by law. The investigation shall be uniform throughout the United States. During the interrogation of the applicant and at the applicant's request, an attorney or representative who has filed an appearance in accordance with Part 292 of this chapter may be permitted to be present and observe the interrogation and make notes without otherwise participating therein.

(b) *Conduct of investigation.* Prior to the beginning of the investigation, the Service officer shall make known to the applicant the official capacity in which he/she is conducting the investigation. The applicant shall be questioned under oath or affirmation in a separate setting apart from the public. The applicant shall be questioned as to each assertion made by him/her in the application to file a petition and in any supplemental form. Whenever necessary, the written answers in the forms shall be corrected by the officer to conform to the oral statements made under oath or affirmation. The Service officer may have a stenographic transcript made, or prepare an affidavit covering testimony of the applicant. The questions to the applicant shall be repeated in different form and elaborated, if necessary, until the officer conducting the investigation is satisfied that the person being questioned fully understands them. At the conclusion of the investigation all corrections made on the application form and supplements thereto must be consecutively numbered and recorded in the space provided therefor in the applicant's affidavit contained in the form. The affidavit must then be subscribed and sworn to or affirmed by the applicant and signed by the Service officer. Witnesses, if called, shall be questioned to develop their own credibility and competency as well as the extent of their personal knowledge of the applicant's qualifications to become a naturalized citizen. If the applicant is excepted from the requirement of reading and writing, and speaking English, the questioning, including the examination of the applicant's knowledge and understanding of the Constitution, history, and form of Government of the United States, may be conducted through an interpreter.

[47 FR 10778, Mar. 12, 1982]

§ 332.13 Use of record of preliminary investigation.

The record of the preliminary investigation, including the executed and corrected application form and supplements thereto, affidavits, transcripts of testimony, documents and other evidence, shall be submitted to the examiner designated to conduct a preliminary examination pursuant to Part 335 of this chapter, for his use in examining the petitioner and witnesses.

[30 FR 13005, Oct. 13, 1965]

PART 332a—OFFICIAL FORMS

Sec.
332a.1 Official forms essential to exercise of jurisdiction.
332a.2 Official forms prescribed for use of clerks of naturalization courts.
332a.11 Initial application for official forms.
332a.12 Subsequent application for official forms.
332a.13 Alteration of forms of petitions or applications for naturalization.

AUTHORITY: Secs. 103, 310, 332, 66 Stat. 173, 239, 252; 8 U.S.C. 1103, 1421, 1443.

SOURCE: 22 FR 9817, Dec. 6, 1957, unless otherwise noted.

§ 332a.1 Official forms essential to exercise of jurisdiction.

Before exercising jurisdiction in naturalization proceedings, the naturalization court shall direct the clerk of such court upon written application to obtain from the Service, in accordance with section 310(c) of the Immigration and Nationality Act, proper forms, records, booked, and supplies required in naturalization proceedings. Such jurisdiction may not be exercised until such official forms, records, and books have been supplied to such court. Only such forms as are supplied shall be used in naturalization proceedings. Where sessions of the court are held at different places, the judge of such court may require the clerk to obtain a separate supply of official forms, records and books for each such place.

§ 332a.2 Official forms prescribed for use of clerks of naturalization courts.

The following described forms only shall be used by clerks of courts having naturalization jurisdiction, in the exercise of such jurisdiction:

Form No., Title, and description

N-3—Requisition for Forms and Binders.
N-4—Monthly Report—Naturalization Papers forwarded.
N-5—Continuation Sheet of Monthly Report—Naturalization Papers forwarded.
N-7—Quarterly Abstract of Collections of Naturalization Fees.

N-12—Penalty Envelope (to be addressed to any office of Service).
N-13—Penalty Envelope (large—to be addressed to any office of Service).
N-300—Application to File Declaration of Intention.
N-315—Declaration of Intention.
N-350—Application to Renounce Danish Citizenship.
N-351—Renunciation of Danish Citizenship.
N-400—Application to File Petition for Naturalization.
N-400A—Supplement to Application to File Petition for Naturalization (under section 324 (a) or 327, Immigration and Nationality Act).
N-400B—Supplement to Application to File Petition for Naturalization (by a seaman, under section 330 of the Immigration and Nationality Act).
N-401—Preliminary Form to take Oath of Allegiance (by a woman formerly a citizen, under section 324(c) of the Immigration and Nationality Act, or the act of June 25, 1936, as amended).
N-402—Application to File Petition for Naturalization in Behalf of a Child (under section 322 or 323, Immigration and Nationality Act).
N-403—Request to have Petition for Naturalization marked "Void".
N-404—Request for Withdrawal of Petition for Naturalization.
N-405—Petition for Naturalization (under general provisions of the Immigration and Nationality Act).
N-407—Petition for Naturalization (in behalf of a child, under section 322 or 323, Immigration and Nationality Act).
N-408—Application to take Oath of Allegiance and Form of such Oath (by a woman formerly a citizen, under section 324(c), Immigration and Nationality Act, or the Act of June 25, 1936, as amended).
N-410—Motion for Amendment of Petition (application).
N-414—Acknowledgment of Filing Petition for Naturalization.
N-414A—Acknowledgment of Filing Petition for Naturalization and Index Card.
N-455—Application for Transfer of Petition for Naturalization.
N-458—Application to Correct Certificate of Naturalization.
N-480—Naturalization Petitions Recommended to be Granted (and) Order of Court Granting Petitions for Naturalization.
N-481—Naturalization Petitions Recommended to be Granted (continuation sheet).
N-484—Naturalization Petitions Recommended To Be Denied (and) Order of Court Denying Petitions for Naturalization.
N-485—Naturalization Petitions Recommended to be Granted (on Behalf of Children) (and) Order of Court Granting Petitions for Naturalization.
N-550—Certificate of Naturalization.
N-580—Application for a Certificate of Naturalization or Repatriation (under section 343(a) of the Immigration and Nationality Act or 12th subdivision, section 4, of Act of June 29, 1906).

[22 FR 9817, Dec. 6, 1957; 22 FR 9250, Nov. 28, 1957, as amended at 26 FR 10928, Nov. 22, 1961; 27 FR 2681, Mar. 22, 1962; 30 FR 6940, May 22, 1965; 31 FR 14078, Nov. 8, 1966; 32 FR 13756, Oct. 3, 1967; 32 FR 14274, Oct. 14, 1967; 47 FR 10778, Mar. 12, 1982]

§ 332a.11 Initial application for official forms.

Whenever the initial application for forms, records, books and supplies is made by a State court of record, it shall be accompanied by a certificate of the Attorney General of the State, certifying that the said court is a court of record, having a seal, a clerk, and jurisdiction in actions at law or in equity, or at law and in equity, in which the amount in controversy is unlimited.

§ 332a.12 Subsequent application for official forms.

Included with the initial supply of official forms, records, and books furnished to the various courts by the Service shall be Form N-3 entitled "Requisition for Forms and Binders," and thereafter such forms shall be used by clerks of courts in making requisition for forms, records, books, and supplies for use in naturalization proceedings in their respective courts.

§ 332a.13 Alteration of forms of petitions or applications for naturalization.

The official forms for petitions or applications for naturalization to the court shall be altered by the clerk of the court as follows:

(a) *Insertion of applicable acts or sections of acts.* Whenever the petition form is designed for use under more than one act or more than one section of an act, by inserting under the title of the form the applicable act or section.

(b) *Exemption from residence or physical presence in the United States or State.* Whenever residence or physical presence in the United States or

State for any specified period is not required, by striking out the allegations relating thereto as to the period of United States or State residence or physical presence.

(c) *Exemption from lawful admission for permanent residence.* Whenever lawful admission for permanent residence is not required, by striking out the allegations relating thereto.

(d) *Exemption from intention to reside permanently in the United States.* Whenever intention to reside permanently in the United States is not required, by striking out the allegations relating thereto.

(e) [Reserved]

(f) *Oath of allegiance.* Whenever the petitioner or applicant for naturalization is exempt from taking the oath of allegiance prescribed in Part 337 of this chapter in its entirety, by striking from the oath of allegiance the inapplicable clauses.

(g) *Naturalization authorized by private law.* Whenever Form N-408 is filed pursuant to § 324.14 of this chapter, the form shall be amended by inserting the words "Under Private Law Number ——— Congress" under the title in lieu of the printed matter set forth thereunder; by replacing averment 7 with an allegation indicating the manner in which United States citizenship was lost; by substituting the words "as indicated in averment 7" for the words "by marriage" which appear in averment 8; by deleting averment 10; and by changing the period at the end of averment 11 to a comma and adding "pursuant to Private Law Number ——— Congress, a copy of which is attached to this application."

(h) *Previous filing of another petition.* Whenever the petitioner has previously filed another petition for naturalization the word "not" shall be stricken from the appropriate allegation.

(i) *Benefits of section 328(d) or 330(a), Immigration and Nationality Act claimed.* Whenever residence and physical presence benefits are claimed, by inserting an allegation (14): I claim the benefits of section 328(d) (or 330(a)), Immigration and Nationality Act.

(j) *Benefits of section 319(c) of the Act claimed.* Whenever the benefits of section 319(c) of the Act are claimed, by inserting in allegation (14) the statement "I have been employed continuously for a period of not less than 5 years after a lawful admission for permanent residence, by a U.S. incorporated nonprofit organization recognized by the Attorney General as being principally engaged in conducting abroad through communications media the dissemination of information which significantly promotes U.S. interests abroad and, upon such basis, I claim the benefits of section 319(c), Immigration and Nationality Act." If the person filing the petition is not then employed by the organization, the statement "My employment terminated within 6 months of the filing of my petition." also shall be inserted in allegation (14); or, as an alternative statement, to be inserted if such person then is and will continue to be employed abroad by the organization, "I intend in good faith to resume my residence in the United States immediately upon termination of such employment."

(k) *Benefits of section 319(d) of the Act claimed.* Whenever the benefits of section 319(d) of the Act are claimed, by inserting in allegation (14) the statement "I am the surviving spouse of a United States citizen who died during a period of honorable service in the Armed Forces of the United States, and with whom I was living in marital union at the time of his death."

[22 FR 9818, Dec. 6, 1957, as amended at 23 FR 2673, Apr. 23, 1958; 31 FR 14079, Nov. 3, 1966; 31 FR 14629, Nov. 17, 1966; 33 FR 255, Jan. 9, 1968; 33 FR 11354, Aug. 9, 1968; 47 FR 10778, Mar. 12, 1982]

PART 332b—INSTRUCTION AND TRAINING IN CITIZENSHIP RESPONSIBILITIES: TEXTBOOKS, SCHOOLS, ORGANIZATIONS

Sec.

332b.1 Public school instruction and training in citizenship responsibilities of applicants for naturalization.
332b.3 Federal citizenship textbooks.

Sec.
332b.4 Public school certificates as evidence of petitioner's educational progress.
332b.5 Cooperation with official National and State organizations.

AUTHORITY: Secs. 103, 332, 346, 66 Stat. 173, 252, 266; 8 U.S.C. 1103, 1443, 1457.

SOURCE: 22 FR 9818, Dec. 6, 1957, unless otherwise noted.

§ 332b.1 Public school instruction and training in citizenship responsibilities of applicants for naturalization.

The Central Office and the field offices of the Service shall cooperate with appropriate authorities or organizations in the establishment and maintenance of classes within or under the supervision of the public schools for the preparation of naturalization applicants for their citizenship duties and responsibilities. Field officers shall visit such classes when practicable. Should applicants for naturalization who desire such preparation live in remote localities where the establishment of a class is impracticable, field officers shall communicate with the appropriate representative of the public schools for the purpose of making other suitable arrangements, if possible, for their instruction.

§ 332b.3 Federal citizenship textbooks.

Citizenship textbooks, for the free use of applicants for naturalization receiving instruction in or under the supervision of the public schools in preparation for citizenship, shall be prepared and distributed by the Service to the appropriate representatives of the public schools upon their signed requisitions therefor.

§ 332b.4 Public school certificates as evidence of petitioner's educational progress.

Public school certificates attesting the attendance and progress records of petitioners for naturalization in citizenship classes shall be given weight by naturalization officers in determining the petitioner's knowledge and understanding of the fundamentals of the history, and of the principles and form of government of the United States, and his ability to read, write, and speak English, provided that approval of the courses of instruction, teaching, and examinations of the public schools issuing such certificates is given by the district director and the naturalization courts.

§ 332b.5 Cooperation with official National and State organizations

The Central Office and the field offices shall take steps to obtain the aid of and to cooperate with official National and State organizations in the Service's program of promoting instruction and training of applicants for naturalization for their citizenship duties and responsibilities. Similar action shall be taken in relation to duly accredited unofficial educational, social service, welfare, and other organizations having as one of their objects the preparation of applicants for naturalization for their citizenship duties and responsibilities.

PART 332c—PHOTOGRAPHIC STUDIOS

AUTHORITY: Secs. 103, 332(g) of the Immigration and Nationality Act; 8 U.S.C. 1103, 1443(g).

§ 332c.1 Establishment of photographic studios.

District directors shall after investigation recommend to the appropriate regional commissioner the establishment and operation without profit, of photographic studios by sponsoring organizations solely for the benefit of persons seeking to comply with the requirements of the immigration and naturalization laws. Such studios must be in a building occupied by the Service and be conducted under the supervision of the district director. Each sponsoring organization shall submit an annual accounting of the conduct of each studio to the regional commissioner through the district director.

[47 FR 38673, Sept. 2, 1982]

PART 332d—DESIGNATION OF EMPLOYEES TO ADMINISTER OATHS AND TAKE DEPOSITIONS

AUTHORITY: Secs. 103, 332, 66 Stat. 173, 252, 8 U.S.C. 1103, 1443.

§ 332d.1 Designation of employees to administer oaths and take depositions.

All immigration officers and other officers or employees of the Service of an equal or higher grade are hereby designated to administer oaths or affirmations and take depositions in matters relating to the administration of the naturalization and citizenship laws. In addition, such other employees as may be designated by a district director are hereby authorized to administer oaths or affirmations.

[37 FR 2767, Feb. 5, 1972]

PART 333—PHOTOGRAPHS

Sec.
333.1 Description of required photographs.
333.2 Attachment of photographs to documents.

AUTHORITY: Secs. 103, 332, 333, 334, 66 Stat. 173, 252, 253, 254; 8 U.S.C. 1103, 1443, 1444, 1445.

§ 333.1 Description of required photographs.

Every applicant required to furnish photographs of himself under this subchapter shall submit three identical photographs which shall be 2 by 2 inches in size, unmounted, printed on a thin paper, have a light background, clearly show a full front view of the features of the applicant with head bare (unless the applicant is wearing a headdress as required by a religious order of which he is a member), with the distance from the top of the head to point of chin approximately 1¼ inches, and which shall have been taken within 30 days of the date they are furnished. Submitted photographs may be in natural color or in black and white, but black and white photographs which have been tinted or otherwise colored are not acceptable. The applicant, except in the case of a child or other person physically incapable of signing his name, shall sign each copy of the photograph with his full true name, in such manner as not to obscure the features. The signature shall be by mark if the applicant is unable to sign his name. If the applicant is a prospective petitioner for naturalization, the photographs shall be signed by him in the English language, unless the applicant is of the class exempted from signing a petition for naturalization in the English language, as provided by § 334.13 of this chapter, in which case the photographs may be signed in any language. If a child is unable to sign his name, the photographs shall be signed by a parent or guardian, the signature reading "(name of child) by (name of parent or guardian)". The photographs shall be signed when submitted with an application if the instruction accompanying the application so require. If the instructions do not so require the photographs shall be submitted without being signed and shall be signed at such later time during the processing of the application as may be appropriate.

[26 FR 4605, May 26, 1961]

§ 333.2 Attachment of photographs to documents.

There shall be securely and permanently attached to each original and duplicate certificate of naturalization and to each duplicate and triplicate declaration of intention issued by any clerk of court, and to each copy of a declaration of intention, certificate of naturalization or certificate of citizenship issued by the Service, a signed photograph of the applicant. In each case in which a seal is affixed, the imprint of a part of the seal shall be affixed so as to extend over the lower portion of the photograph in such manner as not to obscure the features of the applicant.

[22 FR 9819, Dec. 6, 1957]

PART 334—PETITION FOR NATURALIZATION

Sec.
334.1 Right to file petition or application for naturalization.
334.2 Oath or affirmation of petitioner.
334.3 Petitions for naturalization; numbering, indexing, binding.
334.11 Petition for naturalization and preliminary application.
334.13 Filing of petition for naturalization.
334.14 Investigation and report if applicant is sick or disabled.
334.15 Void petitions for naturalization.
334.16 Amendment of petition or application for naturalization.

Sec.
334.17 Transfer of petition for naturalization.
334.18 Withdrawal of petition and failure to prosecute.
334.21 Verification of petition for naturalization; administration of oath.

AUTHORITY: Secs. 103, 332, 334, 335, 66 Stat. 173, 252, 254, 255; 8 U.S.C. 1103, 1443, 1445, 1446.

SOURCE: 22 FR 9819, Dec. 6, 1957, unless otherwise noted.

§ 334.1 Right to file petition or application for naturalization.

No person shall be denied the right to apply for naturalization in accordance with the procedure prescribed in this subchapter to any court authorized to exercise naturalization jurisdiction.

§ 334.2 Oath or affirmation of petitioner.

The petition for naturalization shall be executed under the following oath (or affirmation): "You do swear (affirm) that you know the contents of this petition for naturalization subscribed by you, and that the same are true to the best of your knowledge and belief."

[47 FR 10778, Mar. 12, 1982]

§ 334.3 Petitions for naturalization: numbering, indexing, binding.

Petitions for naturalization shall be numbered consecutively in the order in which they are filed, shall be filed chronologically in separate volumes, indexed, and made a part of the records of the naturalization court. Each such volume shall, upon completion, be permanently bound by the clerk of court. Whenever a petitioner's name has been changed by order of court the original and the changed name shall be entered by the clerk of court in the index of petitions for naturalization.

§ 334.11 Petition for naturalization and preliminary application.

A person who desires to apply for naturalization shall, before filing his petition for naturalization, execute and submit preliminary application Form N-400. Former citizens who are applying under section 324(a) or 327 of the Act shall execute supplement Form N-400A. Seamen who are applying under section 330 of the Act shall execute supplement Form N-400B. The Service shall notify the applicant when and where to appear for preliminary investigation and filing his/her petition for naturalization.

[47 FR 10778, Mar. 12, 1982]

§ 334.13 Filing of petition for naturalization.

The petition for naturalization and the duplicate copy thereof shall be filed by the petitioner, in person, with the clerk of the court or his authorized deputy and only in the office of the clerk, except that an applicant for naturalization who satisfactorily establishes that he is prevented by sickness or other disability from appearing in the office of the clerk, may file the petition for naturalization at such other place as may be designated by the clerk of court or his authorized deputy. Except as otherwise provided in this subchapter, the petition shall be on Form N-405 and shall contain an averment that it is the intention of the petitioner to reside permanently in the United States. The petition shall be signed by the petitioner in the English language, if physically able to write, unless the petitioner on the date of the filing of the petition for naturalization as provided in Section 334 of this Act, is over fifty years of age and has been living in the United States for periods totaling at least twenty years subsequent to a lawful admission for permanent residence, in which case the petitioner may sign his name in any language. When the petition has been so filed, the clerk shall furnish to the petitioner an acknowledgment of the filing of the petition of Form N-414 or Form N-414a. The petitioner shall pay the clerk of the naturalization court, at the time the petition is filed, a fee of $25, unless the petitioner is exempt therefrom under section 344(h) of the Immigration and Nationality Act or under section 3 of the Act of October 24, 1968, or has been granted a waiver of the fee under the provisions of § 103.7(c) of this chapter.

[27 FR 2681, Mar. 22, 1962, as amended at 37 FR 928, Jan. 21, 1972; 45 FR 45576, July 7, 1980]

§ 334.11 Investigation and report if applicant is sick or disabled.

Whenever it appears that an applicant for naturalization may be unable, because of sickness or other disability, to present himself in the office of the clerk of a naturalization court to file a petition for naturalization, the district director shall cause an investigation to be conducted to determine the circumstances, and shall report the condition of the applicant to the clerk of court for the purpose of aiding the court to determine whether the clerk of court shall designate another place to file a petition for naturalization. The report shall show whether the sickness or disability is of a nature which so incapacitates the applicant as to prevent him from appearing personally in the office of the clerk of court.

§ 334.15 Void petitions for naturalization.

If a petition for naturalization filed with the clerk of court is materially defective on its face, it shall nevertheless remain a part of the records of the court and the duplicate thereof disposed of, and the fee accounted for, in accordance with the provisions of Part 339 of this chapter. The Service shall inform the petitioner of the defect and the desirability of having the petition marked "Void" in order that the fee may be refunded or credited to the filing of another petition. If the petitioner desires to have the defective petition submitted to the court for a judicial ruling in lieu of having it marked "Void", no refund of the fee shall be made. A request by the petitioner that his petition be marked "Void" shall be made on Form N-403, in duplicate, and submitted to the district director. If the request is approved by the district director the original shall be furnished the clerk of court for attachment to the petition and the clerk of court shall mark the petition "Void". The duplicate shall be retained in the field office file.

§ 334.16 Amendment of petition or application for naturalization.

(a) *During pendency of petition or application.* An application to amend a petition or application for naturalization, while such application or petition is pending, shall be made by the petitioner or applicant on Form N-410, with copies thereof equal to the number of copies of the petition or application for naturalization, and presented to the court at the hearing on the petition or application for naturalization. The application shall be accompanied by the fee specified in § 103.7(b)(1) of this chapter, unless it was initiated by, and for the convenience of, the government. When the court orders the petition or application amended, the original order shall be filed with the original petition or application and the copies attached to the respective copies of the petition or application.

(b) *After final action on petition or application.* Whenever an application is made to the court to amend a petition or application for naturalization after final action thereon has been taken by the court, a copy of the application shall be served upon the district director having administrative jurisdiction over the territory in which the court is located, in the manner and within the time provided by the rules of court in which application is made. No objection shall be made to the amendment of a petition for naturalization after the petitioner for naturalization has been admitted to citizenship if the motion or application is to correct a clerical error arising from oversight or omission. A representative of the Service may appear at the hearing upon such application and be heard in favor of or in opposition thereto. When the court orders the petition amended, the clerk of court shall transmit a copy of the order to the district director for inclusion in the Service file.

[22 FR 9819, Dec. 6, 1957, as amended at 32 FR 9635, July 4, 1967; 45 FR 10313, Feb. 15, 1980]

§ 334.17 Transfer of petition for naturalization.

(a) *Application for transfer.* An application to transfer a petition for naturalization shall be made on Form N-455, in quadruplicate, to the district director exercising administrative jurisdiction over the place where the court in which the petition is filed is located.

(b) *Action by district director.* If the district director consents to the transfer, he shall so indicate on each copy of Form N-455, which shall be filed with the clerk of court in which the petition is pending. If the district director does not consent to the transfer he shall so indicate on each copy of Form N-455 which shall be filed with the clerk of court, with a memorandum of the district director setting forth the reasons for the denial. The applicant shall be notified by the district director of the filing of Form N-455 with the clerk of court, and whether consent has been given by the district director.

(c) *Action by court in which petition is filed.* The court in which the petition is filed shall enter an order on the original copy of Form N-455, approving or disapproving the application. If the application is approved, the original copy of Form N-455 shall be filed with the naturalization record in the office of the clerk of court, the duplicate and triplicate copies, duly attested and certified, transmitted to the court to which the petition is to be transferred, and the quadruplicate copy, also attested and certified, transmitted to the district director. If the application is disapproved, the original Form N-455 shall be filed with the naturalization record in the office of the clerk of court and the remaining copies transmitted to the district director, who shall notify the applicant of the disapproval.

(d) *Action by court to which petition is transferred.* The court to which the petition is to be transferred shall enter an order on the duplicate copy of Form N-455, approving or disapproving the transfer. The duplicate copy shall be filed with the clerk of the court to which the petition is to be transferred, and the triplicate copy, duly attested and certified, transmitted to the clerk of the court in which the petition is filed. If the application is disapproved, the clerk of court receiving the triplicate copy shall notify the district director, who shall notify the applicant of the disapproval.

(e) *Transfer of petition and record.* If the court to which the petition is to be transferred approves the transfer, the clerk of court in which the petition is filed shall file the triplicate copy of Form N-455 with the naturalization record and forward a certified copy of the petition, and the originals of all documents filed relating thereto, to the court to which the petition is being transferred, and notify the district director having administrative jurisdiction over the place in which the petition is filed, of the action taken. Upon receipt of the certified copy and record, the clerk of court to which the petition is transferred shall index it, number it consecutively in the order in which it is received, prefixed by the letters TR, and in a series separate from petitions originally filed in the court. The petition shall be made a part of the record of the naturalization court. No fee shall be charged by the clerk of the court to which the petition is transferred for the filing of the transferred petition or the issuance of a certificate of naturalization.

[22 FR 9820, Dec. 6, 1957; 22 FR 9520, Nov. 28, 1957, as amended at 23 FR 5820, Aug. 1, 1958]

§ 334.18 Withdrawal of petition and failure to prosecute.

(a) A petitioner who desires to withdraw his petition for naturalization after the filing thereof shall make request for withdrawal on Form N-404, in duplicate. The original shall be filed with the clerk of court and the duplicate with the office of the Service exercising administrative jurisdiction over the district in which the court is located. At the final hearing upon the petition, the officer in attendance shall inform the court whether the district director consents to the withdrawal of the petition. In cases in which the district director does not consent to the withdrawal, the court shall determine the petition on its merits.

(b) At the final hearing upon a petition for naturalization which the petitioner has failed to prosecute, the officer in attendance shall inform the court whether the district director consents to dismissal of the petition for lack of prosecution. In cases in which the district director does not move that the petition be dismissed for lack of prosecution, the court shall determine the petition on its merits.

§ 334.21 Verification of petition for naturalization; administration of oath.

Every petition for naturalization must be verified by the petitioner before it is filed. The petitioner shall appear in person either before a designated examiner or before the clerk of the court or authorized deputy, and such officer shall administer the required oath or affirmation to the petitioner.

[47 FR 10778, Mar. 12, 1982]

PART 334a—DECLARATION OF INTENTION

AUTHORITY: Secs. 103, 332, 334, 344, 66 Stat. 173, 252, 254, 264; 8 U.S.C. 1103, 1443, 1445, 1455.

§ 334a.1 Filing and disposition.

Each prospective declarant shall, before making and filing his declaration of intention, submit an application on Form N-300. A clerk of court or his authorized deputy shall not accept a declaration of intention for filing until he has received from the Service the applicant's approved Form N-300 authorizing the issuance of the declaration and showing that the applicant is residing in the United States pursuant to a lawful admission for permanent residence. The declaration of intention shall be executed under oath or affirmation on Form N-315, in triplicate, before the clerk of any court exercising naturalization jurisdiction or his authorized deputy, regardless of the place of residence of the applicant, and only in the office of said clerk. The applicant may sign the declaration and the photographs affixed thereto in any language or by mark if unable to write and shall pay the clerk of court a fee of $5 at the time the declaration of intention is filed, unless a waiver of fee has been granted under the provisions of § 103.7(c) of this chapter. The original declaration of intention shall be retained and filed of record by the clerk of court and the triplicate delivered to the applicant. Declarations of intention shall be numbered consecutively in the order in which they are filed in a series separate from petitions and filed chronologically in separate volumes, indexed, and made a part of the records of the naturalization court.

[23 FR 5820, Aug. 1, 1958, as amended at 37 FR 928, Jan. 21, 1972; 37 FR 2767, Feb. 5, 1972]

PART 335—PRELIMINARY EXAMINATION ON PETITIONS FOR NATURALIZATION

Sec.
335.11 Preliminary examination pursuant to section 335(b) of the Immigration and Nationality Act.
335.12 Recommendations of the designated examiner and the regional commissioner; notice.
335.13 Notice of recommendation of designated examiner.

AUTHORITY: Secs. 103, 332, 335, 66 Stat. 173, 252, 255; 8 U.S.C. 1103, 1443, 1446.

§ 335.11 Preliminary examination pursuant to section 335(b) of the Immigration and Nationality Act.

(a) *When held.* Preliminary examinations shall be open to the public, and shall, where practicable, be held immediately after the petition for naturalization is filed with the clerk of court unless, in the opinion of the district director, the interests of good administration would be better served by holding such examinations prior to the filing of the petition in the office of the clerk of court, but in no event shall such examinations be held before the petition has been properly executed by the petitioner.

(b) *Conduct of examination.* Preliminary examinations shall be held before an employee of the Service designated by the district director to conduct such proceedings and to make findings and recommendations thereon to the naturalization court, who shall be known as the "designated examiner." The petitioner and his witnesses and the witnesses produced on behalf of the Government shall be present. The designated examiner shall, prior to the commencement of the examination, make known to the petitioner his official capacity and that of any other officer of the Service who may participate in the proceeding. The designated examiner shall have before him the entire record of the preliminary interrogation, including the petitioner's application to file a petition for naturalization (Form N-400) and any other evidence or data that may be relevant or material to the inquiry. All testimony taken at the examination shall be under oath or affirmation administered by the designated examiner. The designated examiner may interrogate the petitioner and witnesses produced in behalf of the petitioner or the Government, and present evidence touching upon the petitioner's admissibility to citizenship. He shall regulate the course of the examination, rule upon applications for the issuance of subpenas and issue such subpenas in proper cases, grant or deny continuances, and rule on all objections to the introduction of evidence, which rulings shall be entered on the record. Evidence held by the designated examiner to be inadmissible shall nevertheless be received into the record subject to the ruling of the court. The petitioner and the Government shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. If the petitioner is not represented by an attorney or representative, the designated examiner shall assist the petitioner in the introduction of all evidence available in his behalf. All documentary or written evidence shall be properly identified and introduced into the record as exhibits by number, unless read into the record.

(c) *Assignment of examining officer at preliminary examination.* The district director may in his discretion assign an employee of the Service to act as examining officer at the preliminary examination. Such employee shall examine and cross-examine witnesses produced in behalf of the Government or the petitioner and present evidence pertinent to the petitioner's admissibility to citizenship. The designated examiner may take such part in the interrogation of the petitioner and witnesses and the introduction of evidence as he may deem necessary.

(d) *Stenographic reporting of proceedings; mechanical recording equipment.* A stenographer shall be in attendance whenever, in the opinion of the designated examiner, such attendance is desirable, and in every case to which an examining officer is assigned. The stenographer shall record verbatim the entire proceedings, including the oaths administered and rulings on objections, but shall not record arguments in support of objections, or statements made off the record with the consent of the petitioner. The stenographer shall certify that the transcribed minutes constitute a complete and accurate record of the examination. Whenever, in the opinion of the designated examiner the use of mechanical recording equipment in lieu of a stenographer is deemed desirable, the proceedings may be recorded by such equipment.

(e) *Issuance of subpenas; attendance and mileage fees.* Subpenas requiring the attendance of witnesses or the production of documentary evidence, or both, may be issued by the designated examiner, upon his own volition or upon written application of the petitioner or his attorney or representative, the examining officer, or the Service. Such written application shall specify, as nearly as may be, the relevance, materiality, and scope of the testimony or documentary evidence sought and show affirmatively that the testimony or documentary evidence cannot otherwise be produced. Subpenas shall be issued on Form I-138 and due record shall be made of their service. The subpena may be served by any person over 18 years of age, not a party to the case, designated to make such service by the district director. Mileage and fees for witnesses subpenaed under this section shall be paid by the party at whose instance the subpena is issued at rates allowed and under conditions prescribed by the naturalization court in which the petition is pending. Before issuing a subpena the designated examiner may require a deposit of an amount adequate to cover the fees and mileage involved. If the witness subpenaed neglects or refuses to testify or produce documentary evidence as directed by the subpena, the district director shall request the United States Attorney for the proper district to report such neglect or refusal to any court exercising naturalization jurisdiction and to file a motion in such court for an order directing the witness to appear and testify and to produce the documentary evidence described in the subpena.

(f) *Briefs.* At the conclusion of the preliminary examination the petitioner or his attorney or representative, and the examining officer if one was assigned, may submit briefs in support of arguments made or issues raised at the examination.

(g) *Representation by attorney or representative; absence of representative; advice to petitioner.* The petitioner may be represented by an attorney or representative who has filed an appearance in accordance with Part 292 of this chapter. If at any stage of the preliminary examination it appears to the designated examiner that he may recommend denial of the petition, or granting thereof with the facts to be presented to the court, he shall advise the petitioner of his right to be represented by an attorney or representative. A continuance of the examination shall be granted upon the petitioner's motion for the purpose of obtaining an attorney or representative. The petitioner's attorney or a representative shall be permitted to be present at all times during the preliminary examination or at any subsequent examinations and the petitioner shall not in any such examination or subsequent examinations be interrogated in the absence of his attorney or representative, unless the petitioner waives such appearance. The attorney or a representative shall be permitted to offer evidence to meet any evidence presented or adduced by the Government or the designated examiner. A petitioner who is not represented by an attorney or a representative shall be entitled to all the benefits and the privileges provided for in this section.

(h) *Designation of Service employees to conduct preliminary examinations.* All employees of the Service who have been designated to conduct preliminary examinations upon petitions for naturalization to any naturalization court and to make findings and recommendations thereon to such courts under the provisions of section 333 of the Nationality Act of 1940, as amended, and whose designations are still in force on December 24, 1952, are hereby designated under the provisions of section 335 of the Immigration and Nationality Act to conduct preliminary examinations upon petitions for naturalization to any naturalization court and to make findings and recommendations thereon to such courts. Designations under this paragraph and under paragraph (b) of this section shall remain in force until revoked.

[22 FR 9821, Dec. 6, 1957, as amended at 23 FR 2673, Apr. 23, 1958; 45 FR 83195, Dec. 18, 1980; 46 FR 5861, Jan. 21, 1981; 47 FR 10778, Mar. 12, 1982]

§ 335.12 Recommendations of the designated examiner and the regional commissioner; notice.

As soon as practicable after conclusion of the preliminary examination, the designated examiner shall prepare an appropriate recommendation to the court. If the recommendation is for denial, or for granting with the facts to be presented to the court, the designated examiner shall prepare a memorandum summarizing the evidence, and setting forth findings of fact and conclusions of law, and his recommendation. No evidence dehors the record or evidence not admissible in judicial proceedings under recognized rules of evidence shall be considered in the preparation of the memorandum. The memorandum shall be submitted before final hearing to the regional commissioner, in those cases or classes of cases designated by him, for review and recommendation. If the regional commissioner does not agree with the recommendation of the designated examiner, he shall prepare an appropriate memorandum, with findings of fact, conclusions of law, and the recommendation of the Service, subject to review and approval by the Commissioner in those cases or classes of cases designated by him, for presentation to the court with the designated examiner's memorandum. In the preparation of memoranda, designated examiners and regional commissioners shall be bound by the interpretations and rulings by the Attorney General or the Commissioner on Questions of law.

[38 FR 29878, Oct. 30, 1973]

§ 335.13 Notice of recommendation of designated examiner.

(a) *Recommendation that petition be denied.* When the designated examiner proposes to recommend denial of the petition, the petitioner or his attorney or representative shall be notified thereof and furnished a copy of the designated examiner's memorandum. The notice shall be given in conjunction with notification of the date, place, and time of holding the final hearing. The notice shall be sent by certified mail, with return receipt requested, after any review made by the regional commissioner.

(b) *Recommendation that petition be granted.* When the designated examiner proposes to recommend granting of the petition and to present the facts and issues to the court, the petitioner or his attorney or representative shall be notified of the recommendation and furnished a copy of the designated examiner's memorandum prior to the date of the hearing, and after any review made by the regional commissioner.

(c) *Disagreement between recommendations of designated examiner and the regional commissioner.* In those cases reviewed by the regional commissioner in which his views and recommendations do not agree with those of the designated examiner, the notice required by paragraphs (a) and (b) of this section shall also advise the petitioner of the recommendation of the regional commissioner and that both recommendations will be presented to the court. There shall also be enclosed with such notice a copy of the regional commissioner's memorandum.

(d) *Briefs.* If the petitioner intends to file a brief or memorandum at the final hearing, he shall furnish a copy thereof to the Service office from which the notice on Form N-425 emanated at least 5 days prior to the date of the final hearing. Failure to do so will result in a motion for a continuance if deemed essential for the proper presentation of the Government's case.

[22 FR 9822, Dec. 6, 1957, as amended at 35 FR 17530, Nov. 14, 1970]

PART 335a—TRANSFER, WITHDRAWAL OR FAILURE TO PROSECUTE PETITION FOR NATURALIZATION

Sec.
335a.11 Transfer of petition; procedure.
335a.12 Withdrawal of or failure to prosecute petition; procedure.

AUTHORITY: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103.

§ 335a.11 Transfer of petition; procedure.

See § 334.17 of this chapter.

[22 FR 9822, Dec. 6, 1957]

§ 335a.12 Withdrawal of or failure to prosecute petition; procedure.

See § 334.18 of this chapter.

[22 FR 9822, Dec. 6, 1957]

PART 335c—INVESTIGATIONS OF PETITIONERS FOR NATURALIZATION

AUTHORITY: Secs. 103, 316, 319, 322, 323, 328, 332, 335, 66 Stat. 173, 242, 244, 246, 249, 252, 255; 8 U.S.C. 1103, 1427, 1430, 1433, 1434, 1439, 1443, 1446.

§ 335c.1 Investigations; authority to waive.

The authority to waive personal investigations of petitioners for naturalization under the provisions of section 335(a) of the Immigration and Nationality Act may be exercised by district directors.

[22 FR 9825, Dec. 6, 1957]

PART 336—PROCEEDINGS BEFORE NATURALIZATION COURT

Sec.

336.11 Personal representation of Government at naturalization proceedings.
336.12 Written report in lieu of personal representation.
336.13 Preparation of lists and orders of court for presentation at final hearing.
336.14 Presentation of recommendations of designated examiner and the regional commissioner at final hearing.
336.15 Final hearing: sickness or disability of petitioner; investigation.
336.16a Final hearing; execution of questionnaire.

AUTHORITY: Secs. 103, 332, 335-337, 66 Stat. 173, 252, 255, 257, 258; 8 U.S.C. 1103, 1443, 1446-1448.

§ 336.11 Personal representation of Government at naturalization proceedings.

At least 30 days prior to the holding of any naturalization proceedings referred to in section 336(d) of the Act, the clerk of the naturalization court shall give written notice to the appropriate district director of the time, date, and place of such proceedings. Such notice may be waived by the district director. Final naturalization hearings and other naturalization proceedings shall be attended personally by naturalization examiners or other officers of the Service, who shall interrogate each petitioner or applicant regarding pertinent developments occurring subsequent to the date of filing of the petition or application, and shall, if not affected by the interrogation, present to the court the views and recommendations of the designated examiner and the regional commissioner, as appropriate. If the recommendation of the regional commissioner does not agree with that of the designated examiner, a member of the Service other than the person who conducted the preliminary examination shall, whenever practicable, represent the Service before the court. Such a representative may cross-examine the petitioner and may call other witnesses and produce evidence concerning any matter affecting the petitioner's eligibility for naturalization. When necessary, the representative in attendance shall have a stenographic report made of the testimony.

[47 FR 10779, Mar. 12, 1982]

§ 336.12 Written report in lieu of personal representation.

If a preliminary examination has been conducted pursuant to Part 335 of this chapter, and it is impracticable thereafter for a Service representative to be present at the final naturalization hearing, written notice of that fact shall be given by the Service to the court. The petitions set down for hearing shall be listed on the appropriate forms prescribed by § 336.13. If continuance of the petition is desired, the basis therefor shall be set forth. The forms and memoranda shall be transmitted to the clerk of court, who shall submit the appropriate lists and orders to the court in accordance with the procedure described in § 336.13.

[23 FR 5821, Aug. 1, 1958, as amended at 30 FR 13005, Oct. 13, 1965]

§ 336.13 Preparation of lists and orders of court for presentation at final hearing.

(a) At or prior to the final naturalization hearing the representative attending the hearing shall submit to the court lists and orders of court, in duplicate, on Forms N-480, N-481, or N-485, as appropriate, for petitions recommended to be granted, and on Form N-484 for petitions recommended to be denied; except that all grant and denial lists and orders of the regional commissioner, and denial lists and orders relating to petitions filed under section 322 and section 323 of the Act shall not be on any prescribed published form, but shall be properly drawn as needed on an individual basis. Lists and orders for petitions recommended to be continued also shall not be on any prescribed published form, but shall be drawn as needed on an individual basis. The regional commissioner's lists shall be signed by the district director. After the final hearing, and after any required amendments therein have been made, the presiding judge shall sign the orders of the court.

(b) [Reserved]

(c) When the court does not waive the taking of the oath of allegiance in the case of a child, the order of court granting the petition shall be amended by changing the word "waived" to "taken".

(d) The originals of all court orders and lists specified in this section shall be filed permanently in the court, and the duplicates forwarded by the clerk of court to the appropriate field office of the Service for retention by such office. The same disposition shall be made of any list presented to, but not approved by, the court.

[22 FR 9823, Dec. 6, 1957; 22 FR 9520, Nov. 28, 1957, as amended at 30 FR 6940, May 22, 1965; 32 FR 13756, Oct. 3, 1967; 35 FR 1045, Jan. 27, 1970]

§ 336.14 Presentation of recommendations of designated examiner and the regional commissioner at final hearing.

At the final hearing or prior thereto, in addition to the lists prepared under § 336.13, there shall be presented to the court and made a part of the record in the case, the memoranda of the designated examiner and the regional commissioner prepared pursuant to the provisions of Part 335 of this chapter.

[30 FR 13005, Oct. 13, 1965]

§ 336.15 Final hearing: sickness or disability of petitioner; investigation.

Whenever it appears that a petitioner for naturalization may be unable, because of sickness or other disability, to appear in open court for final hearing upon his petition for naturalization, the district director shall cause an investigation to be conducted to determine the circumstances and shall report the condition of the petitioner to the clerk of court for the purpose of aiding the court to determine whether another place for the final hearing shall be designated. The report shall show whether the sickness or other disability is of a nature which so incapacitates the person as to prevent him from appearing in open court.

[22 FR 9824, Dec. 6, 1957]

§ 336.16a Final hearing: execution of questionnaire.

Immediately prior to the commencement of the final hearing, each person filing a petition for naturalization in his own behalf shall execute the questionnaire on Form N-445; or, if such person is filing a petition for naturalization in behalf of a child pursuant to section 322 of the Immigration and Nationality Act, said child being 13 years of age or older on the date of the final hearing, such person shall execute the questionnaire on Form N-445B.

[47 FR 10779, Mar. 12, 1982]

PART 337—OATH OF ALLEGIANCE

Sec.

337.1 Oath of allegiance.
337.2 Persons naturalized by judicial action; effective date.
337.3 Renunciation of title or order of nobility.
337.4 When requests for change of name granted.
337.11 Oath of renunciation and allegiance; sickness or disability of petitioner.

AUTHORITY: Secs. 103, 322, 323, 332, 337, 66 Stat. 173, 246, 252, 258; 8 U.S.C. 1103, 1433, 1434, 1443, 1448.

SOURCE: 22 FR 9824, Dec. 6, 1957, unless otherwise noted.

§ 337.1 Oath of allegiance.

(a) *Form of oath.* Except as otherwise provided in the Immigration and Nationality Act, a petitioner or applicant for naturalization shall before being admitted to citizenship, take in open court the following oath of allegiance, to which he shall affix his signature on his petition or application for naturalization:

> I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will bear arms on behalf of the United States when required by the law; that I will perform noncombatant service in the armed forces of the United States when required by the law; that I will perform work of national importance under civilian direction when required by the law; and that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.

(b) *Alteration of form of oath; affirmation in lieu of oath.* In those cases in which a petitioner or applicant for naturalization is exempt from taking the oath prescribed in paragraph (a) of this section in its entirety, the inapplicable clauses shall be deleted and the oath shall be taken in such altered form. When a petitioner or applicant for naturalization, by reason of religious training and belief (or individual interpretation thereof), or for other reasons of good conscience, cannot take the oath prescribed in paragraph (a) of this section with the words "on oath" and "so help me God" included, the words "and solemnly affirm" shall be substituted for the words "on oath," the words "so help me God" shall be deleted, and the oath shall be taken in such modified form.

(c) *Obligations of oath.* A petitioner or applicant for naturalization shall, before being naturalized, establish that it is his intention, in good faith, to assume and discharge the obligations of the oath of allegiance, and that his attitude toward the Constitution and laws of the United States renders him capable of fulfilling the obligations of such oath.

[22 FR 9824, Dec. 6, 1957, as amended at 24 FR 2584, Apr. 3, 1959; 32 FR 13756, Oct. 3, 1967]

§ 337.2 Persons naturalized by judicial action; effective date.

Any person who was or shall hereafter be admitted to citizenship by the written order of a naturalization court, shall be deemed to be a citizen of the United States as of the date of taking the prescribed oath of allegiance. Whenever a waiver of such oath is granted by the court in the case of a child naturalized under section 322 or 323 of the Immigration and Nationality Act, the child shall become a citizen of the United States as of the date of such waiver.

§ 337.3 Renunciation of title or order of nobility.

A petitioner for naturalization who has borne any hereditary title or has been of any of the orders of nobility in any foreign state, shall, in addition to taking the oath of allegiance prescribed by § 337.1, make under oath in open court an express renunciation of such title or order of nobility, in the following form:

I further renounce the title of (give title or titles) which I have heretofore held; or

I further renounce the order of nobility (Give the order of nobility) to which I have heretofore belonged.

§ 337.4 When request for change of name granted.

When the court has granted the petitioner's change of name request, the petitioner shall subscribe his new name to the written oath of allegiance on the reverse of the original naturalization petition.

[32 FR 9635, July 4, 1967]

§ 337.11 Oath of renunciation and allegiance; sickness or disability of petitioner.

Whenever it appears that a petitioner for naturalization may be unable because of sickness or other disability to take the oath of allegiance in open court, the district director shall cause an investigation to be conducted to determine the circumstances, and shall report the condition of the petitioner to the naturalization court for the purpose of aiding the court to determine whether the oath may be taken at another place. The report shall show whether the sickness or other disability is of a nature which so incapacitates the person as to prevent him from appearing in open court.

PART 338—CERTIFICATE OF NATURALIZATION

Sec.
338.11 Execution and issuance.
338.12 Endorsement in case name is changed.
338.13 Spoiled certificate.
338.14 Delivery of certificates.
338.15 Signing of certificate.
338.16 Correction of certificates.

AUTHORITY: Secs. 103, 322, 323, 332, 333, 336, 338, 339, 66 Stat. 173, 246, 252, 253, 257, 259; 8 U.S.C. 1103, 1433, 1434, 1443, 1444, 1447, 1449, 1450.

SOURCE: 22 FR 9824, Dec. 6, 1957, unless otherwise noted.

§ 338.11 Exception and issuance.

When a petitioner for naturalization has duly taken and subscribed to the oath of allegiance and a final order admitting petitioner to citizenship has been duly signed by the court, a certificate of naturalization shall be issued by the clerk of the court on Form N-550, in duplicate. The certificates and the stub of the original thereof shall be signed by the petitioner. The certificate shall show under "former nationality" the name of the country of which the petitioner was last a citizen, as shown in the petition, even though petitioner may have been stateless at the time of admission to citizenship. The clerk or his deputy shall endorse the alien registration number on the stubs of the certificates, shall sign the certificates in his own handwriting, and enter on the stubs all the essential facts set forth in the certificates. Both copies of the certificate, including the stubs shall be prepared in one operation on a typewriter with the use of carbon paper. Photographs shall be affixed to the original and duplicate certificates in the manner provided by Part 333 of this chapter. The stub of the original shall be removed and retained by the clerk of court and filed in an upright card file, or in a three by five inch card drawer. The original certificate shall be delivered to the petitioner. The duplicate copies of the certificates shall not be separated from their stubs and shall be forwarded to the appropriate office of the Immigration and Naturalization Service with all other duplicate papers in accordance with Part 339 of this chapter.

§ 338.12 Endorsement in case name is changed.

Whenever the name of a petitioner has been changed by order of court as a part of a naturalization, the clerk of court or his authorized deputy shall make, date, and sign the following endorsement on the reverse side of the original and duplicate of the certificate of naturalization: "Name changed by decree of court from ——, as a part of the naturalization," inserting in full the original name of the petitioner. A similar notation shall be made on the stubs of the original and duplicate certificate. The certificate of naturalization shall be issued and the stub of the original thereof signed by the petitioner in the name as changed.

[22 FR 9824, Dec. 6, 1957, as amended at 35 FR 10497, June 27, 1970]

§ 338.13 Spoiled certificate.

Whenever a certificate of naturalization is damaged, mutilated, defaced, or otherwise spoiled before delivery by the clerk, the original and duplicate, with stubs intact, shall be marked "Spoiled" and transmitted to the appropriate immigration and naturalization office, in the manner described in § 339.2 of this chapter, with the monthly report of the clerk on Form N-4.

§ 338.14 Delivery of certificates.

No certificate of naturalization shall be delivered by the clerk of court in any case in which the representative of the Service in attendance at the final naturalization hearing notifies the clerk of court that the naturalized person has not surrendered his alien registration receipt card. Upon subsequent receipt of notice from the district director that he has waived the surrender of the card or that the card has been surrendered, the certificate shall be delivered by the clerk of court.

§ 338.15 Signing of certificate.

If a child who has been admitted to citizenship under section 322 or section 323 of the Act is unable to sign his name, the certificate of naturalization shall be signed by a petitioning parent, whether natural or adoptive, as may be appropriate, and the signature shall read "(name of naturalized child) by (name of petitioning parent signing)". A naturalized person whose petition was signed by him in a foreign language may sign his certificate of naturalization in the same manner.

[22 FR 9825, Dec. 6, 1957, as amended at 25 FR 10495, Nov. 2, 1960]

§ 338.16 Correction of certificates.

Whenever a certificate of naturalization has been delivered which does not conform to the facts shown on the petition for naturalization, or a clerical error was made in preparing the certificate, an application on Form N-458 may be made by the naturalized person to the district director exercising jurisdiction over the place in which the court is located to authorize the correction of the certificate. If the district director finds that a correction is justified and can be made without mutilating the certificate, he shall authorize the clerk of the issuing court or his authorized deputy on Form N-459, in duplicate, to make the necessary correction and to place a dated endorsement on the reverse of the certificate, over his signature and the seal of the court, explaining the correction. The authorization shall be filed with naturalization record, the corrected certificate returned to the naturalized person and the duplicate Form N-459 shall be endorsed to show the date and nature of the correction and endorsement made, and returned to the district director. No fee shall be charged the naturalized person for the correction. The district director shall forward such duplicate to the official Service file. When a correction would or does result in mutilation of a certificate, the district director may authorize the clerk of court, with the consent of the naturalized person, to issue without fee a new certificate from his supply upon surrender of the incorrect certificate and submission of photographs. The surrendered certificate shall be marked "Spoiled" and transmitted to the district director with the duplicate copy of the new certificate attached to the monthly report of the clerk on Form N-4. The original of the new certificate shall be delivered to the naturalized person.

[22 FR 9825, Dec. 6, 1957, as amended at 24 FR 2584, Apr. 3, 1959; 35 FR 10497, June 27, 1970]

PART 339—FUNCTIONS AND DUTIES OF CLERKS OF NATURALIZATION COURTS

Sec.
339.1 Administration of oath to declarations of intention and petitions for naturalization.
339.2 Monthly reports.
Sec.
339.3 Relinquishment of naturalization jurisdiction.
339.4 Binding of naturalization records.
339.5 Numbering and indexing and filing of petitions for naturalization and declaration of intention.

AUTHORITY: Secs. 103, 332, 339, 344, 66 Stat. 173, 252, 259, 264; 8 U.S.C. 1103, 1443, 1450, 1455.

§ 339.1 Administration of oath to declarations of intention and petitions for naturalization.

It shall be the duty of every clerk of a naturalization court to administer the required oath or affirmation to each applicant for a declaration of intention. The clerk shall receive and file petitions and administer the required oath or affirmation to each petitioner unless such petitioner has executed the petition before a designated examiner.

[47 FR 10779, Mar. 12, 1982]

§ 339.2 Monthly reports.

Clerks of court shall on the first day of each month submit to the district director having administrative jurisdiction over the place in which the court is located, a report on Form N-4, in duplicate, listing all declarations of intention and petitions for naturalization filed and all certificates of naturalization issued or spoiled during the preceding month, in accordance with the instructions contained in Form N-4. When at any time during the month the aggregate number of petitions and declarations filed reaches 100 the clerk shall on request of the district director forthwith forward such reports in accordance with the provisions of this section. The report shall be accompanied by all duplicate copies of declarations of intention and applications therefor on Forms N-300; by all duplicates of petitions for naturalization not previously delivered to a representative of the Service, and all duplicates of certificates of naturalization with stubs intact. The clerk of court shall show opposite the number of each petition in which the petitioner is exempt from payment of a naturalization fee under section 344(h) of the Immigration and Nationality Act or the Act of October 24, 1968, the letter "M". Opposite the name of each such case and at the bottom of the petition, the notation "No fee" shall be inserted. Void petitions shall be listed separately on Form N-4 and on Form N-7 and so indicated on such forms. The clerk of court shall show on Form N-4 the inclusive numbers of all petitions filed, and list individually by name and number in the spaces provided therein all petitions filed during the month. In lieu of forwarding duplicate petitions to the Service with his report on Form N-4, the clerk may deliver the petitions to the examiner immediately after filing.

[22 FR 9825, Dec. 6, 1957, as amended at 32 FR 9635, July 4, 1967; 33 FR 17137, Nov. 19, 1968]

§ 339.3 Relinquishment of naturalization jurisdiction.

Whenever a court relinquishes naturalization jurisdiction, the clerk of court shall, within ten days following the date of relinquishment, furnish the district director having administrative jurisdiction over the place in which the court is located, a certified copy of the order of court relinquishing jurisdiction. A representative of the Service shall thereafter examine the naturalization records in the office of the clerk of court and shall bind and lock them. The clerk of court shall return all unused forms and blank certificates of naturalization to the district director with his monthly report on Form N-4.

[22 FR 9825, Dec. 6, 1957]

§ 339.4 Binding of naturalization records.

Whenever a volume of petitions for naturalization, applications to take the oath of allegiance, declarations of intention, orders of court, or other documents affecting or relating to the naturalization of persons is completed, it shall be bound and locked by the clerk of court.

[22 FR 9825, Dec. 6, 1957]

§ 339.5 Numbering and indexing and filing of petitions for naturalization and declarations of intention.

See §§ 334.3 and 334a.1 of this chapter.

[23 FR 9125, Nov. 26, 1958]

PART 340—REVOCATION OF NATURALIZATION

AUTHORITY: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103.

§ 340.11 Reports.

Whenever it appears that any grant of naturalization may have been illegally procured or procured by concealment of a material fact or by willful misrepresentation, the facts shall be reported to the district director having jurisdiction over the naturalized person's last known place of residence in the United States. If the district director is satisfied that a prima facie showing has been made that grounds for revocation exist, he shall report the facts in writing to the regional commissioner with a recommendation as to whether revocation proceedings should be instituted. If it appears that naturalization was procured in violation of section 1425 of Title 18 of the United States Code the facts in regard thereto may be presented by the district director to the appropriate United States Attorney for possible criminal prosecution.

[29 FR 2740, Feb. 27, 1964]

PART 341—CERTIFICATES OF CITIZENSHIP

Sec.

341.1 Application.

341.2 Examination upon application.

341.3 Depositions.

341.4 Surrender of immigration documents.

341.5 Report and recommendation.

341.6 Denial of application.

341.7 Issuance of certificate.

AUTHORITY: Secs. 103, 309(c), 332, 333, 337, 341, 344, 66 Stat. 173, 238, 252, 254, 258, 263, 264, as amended; 8 U.S.C. 1103, 1409(c), 1443, 1444, 1448, 1452, 1455.

SOURCE: 30 FR 5472, Apr. 16, 1965, unless otherwise noted.

§ 341.1 Application.

(a) *Form N-600.* An application for a certificate of citizenship by or in behalf of a person who claims to have acquired United States citizenship under section 309(c) or to have acquired or derived United States citizenship as specified in section 341 of the Act shall be submitted on Form N-600 in accordance with the instructions thereon, accompanied by the fee specified in § 103.7(b)(1) of this chapter. The application shall be supported by documentary and other evidence essential to establish the claimed citizenship, such as birth, marriage, death, and divorce certificates.

(b) *Form N-400.* An applicant for naturalization who believes that, upon naturalization, his children under 18 years of age will derive United States citizenship under section 320 or under section 321 of the Act, may make application for a certificate or citizenship on behalf of any such children in advance of naturalization. The application shall be made on Form N-400, Application to File Petition for Naturalization, at the same time that the parent files his application for naturalization, by completing therein the item relating to a certificate of citizenship and submitting therewith the fee specified in § 103.7(b)(1) of this chapter for each certificate of citizenship applied for, and supporting documentary and other evidence, such as birth, marriage, death, and divorce certificates, essential to establish that citizenship will be derived as claimed.

[45 FR 10313, Feb. 15, 1980]

§ 341.2 Examination upon application.

(a) *Personal appearance of claimant and parent or guardian when testimony deemed necessary.* Each claimant, when notified to do so, shall appear in person before an assigned officer for examination under oath or affirmation upon the application. A person under 18 years of age must have a parent or guardian apply, appear, and testify for the applicant unless one is unavailable and the district director is satisfied that the claimant is old enough to provide reliable testimony. The same rule will apply for incompetent applicants. In all cases reliable testimony should be obtained. At the examination the claimant, and the acting parent or guardian if necessary, shall present testimony and evidence pertinent to the claim to citizenship and shall have the right to meet any evidence adverse thereto and to cross-examine witnesses called by the Government.

(b) *Witness*—(1) *Personal appearance.* A witness shall be called to testify under oath or affirmation at the district director's option only if that person's testimony is needed to prove a particular point, and only if alternative proof is unavailable or more difficult to produce than is the witness.

(2) *Substitution and waiver.* When testimony is deemed necessary by the district director and the presentation of the person or persons through whom citizenship is claimed is precluded by reason of death, refusal to testify, unknown whereabouts, advanced age, mental or physical incapacity, or severe illness or infirmity, another witness or witnesses shall be produced. A substitute witness also may be produced in lieu of such person if such person is a member of the United States Armed Forces serving outside the United States in an area where his testimony could not be taken without imposing extreme hardship upon him, or without unduly delaying action on the application, and no issue is present which can be resolved only by this testimony.

(c) *Proof.* The burden of proof shall be upon the claimant, or his parent or guardian if one is acting in his behalf, to establish the claimed citizenship by a preponderance of the evidence.

(d) *Assignment and authority of officer.* A district director shall assign an officer of the Service to conduct the examination provided for in paragraphs (a) and (b) of this section. The assigned officer shall have authority to administer oaths or affirmations; to present and receive evidence; to rule upon offers of proof; to take or cause to be taken depositions or interrogatories; to regulate the course of the examination; to examine and cross-examine all witnesses appearing in the proceedings; to grant or order continuances; to consider and rule upon objections to the introduction of evidence; to make a report and recommendation to the district director as to whether the application shall be granted or denied, and to take such other action as may be appropriate to the conduct of the examination and the disposition of the application.

(e) *Conduct of examination.* The assigned officer shall, at the commencement of the examination of the claimant or the acting parent or guardian, advise them of their rights as set forth in paragraphs (a) and (f) of this section, and shall interrogate them under oath or affirmation with regard to each assertion made in the application and any other matter pertinent to the claim to citizenship; in addition, when a witness is deemed necessary, he shall interrogate each witness with regard to pertinent matters within the personal knowledge of the witness, such as the relationship between the claimant and the citizen source or sources; the citizenship of the latter, and any possible expatriatory acts performed by the claimant and the citizen source or sources. He may, in his discretion, have a transcript made of the testimony. At the conclusion of the examination of the claimant or the action parent or guardian, all corrections made on the applications form shall be consecutively numbered and recorded in the space provided therefor in the form. The affidavit shall then be signed and sworn to or affirmed by the claimant or the acting parent or guardian; and the remainder of the affidavit completed and signed by the assigned officer.

(f) *Representation during proceedings.* The claimant shall have the right to representation during the proceedings, as provided in Part 292 of this chapter, and such representative shall have the right to examine and cross-examine witnesses appearing in the proceedings; to introduce evidence, to object to the introduction of evidence, which objections shall be stated succinctly and entered on the record, and to submit briefs. If the claimant is not represented by an attorney or representative, the assigned officer shall assist him in the introduction of all evidence available in his behalf.

(g) *Assignment of additional officer.* The district director may, in his discretion, assign an officer of the Service to examine and cross-examine the applicant and any witnesses produced by the applicant or by the Government and present evidence pertinent to the applicant's claim to citizenship. The officer of the Service assigned to conduct the examination under this part may take such part in the proceedings as he may deem necessary.

[30 FR 5472, Apr. 16, 1965, 30 FR 5621, Apr. 21, 1965, as amended at 32 FR 6260, Apr. 21, 1967; 45 FR 84011, Dec. 22, 1980]

§ 341.3 Depositions.

If satisfied that a witness whose testimony is essential is not available for examination in the United States, the assigned officer may authorize the taking of a deposition abroad by written interrogatories before an officer of the Service or a United States consular official.

§ 341.4 Surrender of immigration documents.

Each claimant shall surrender any immigration identification and alien registration receipt cards in his possession.

§ 341.5 Report and recommendation.

The officer assigned to act on the application shall report his/her findings and recommendation by completing the Report and Recommendation section of the Form N-600 application, or by formal order, as appropriate. The record, including the report and recommendation, shall be submitted to the distict director, who shall sign the report either approving or disapproving the recommendation.

[50 FR 39649, Sept. 30, 1985; 50 FR 41480, Oct. 11, 1985]

§ 341.6 Denial of application

If it is the decision of the district director to deny the application for a Certificate of Citizenship, the applicant shall be furnished the reasons for denial and advised of the right to appeal in accordance with the provisions of 8 CFR 103.3(a). After an application for a Certificate of Citizenship has been denied and the appeal time has run, a second application submitted by the same individual shall be rejected and the applicant instructed to submit a motion for reopening or reconsideration in accordance with 8 CFR 103.5. The motion shall be accompanied by the rejected application and the fee specified in 8 CFR 103.7 reduced by the amount of the fee paid with the rejected application. A decision shall be issued with notification of appeal rights in all Certificate of Citizenship cases, including any case denied due to the applicant's failure to prosecute the application.

[50 FR 39649, Sept. 30, 1985]

§ 341.7 Issuance of certificate.

If the application is granted, a Certificate of Citizenship shall be issued and, unless the claimant is unable by reason of mental incapacity or young age to understand the meaning thereof, he/she shall take and subscribe to the oath of renunciation and allegiance, prescribed by Part 337 of this chapter, before an officer of the Service within the United States. Thereafter, delivery of the certificate shall be made in the United States to the claimant or the acting parent or guardian, either personally or by certified mail.

[50 FR 39650, Sept. 30, 1985; 50 FR 41480, Oct. 11, 1985]

PART 342—ADMINISTRATIVE CANCELLATION OF CERTIFICATES, DOCUMENTS, OR RECORDS

Sec.
342.1 Notice.
342.2 Service of notice.
342.3 Allegations admitted; no answer filed; no personal appearance requested.
342.4 Answer asserting defense; personal appearance requested.
342.5 Conduct of examination.
342.6 Depositions.
342.7 Report and recommendation.
342.8 Appeals.
342.9 Notice re 18 U.S.C. 1428.

AUTHORITY: Secs. 103, 342, 66 Stat. 173, 263; 8 U.S.C. 1103, 1453.

SOURCE: 28 FR 209, Jan. 9, 1963, unless otherwise noted.

§ 342.1 Notice.

If it shall appear to a district director that a person has illegally or fraudulently obtained or caused to be created a certificate, document, or record described in section 342 of the Act, a notice shall be served upon the person of intention to cancel the certificate, document, or record. The notice shall contain allegations of the reasons for the proposed action and shall advise the person that he may submit, within 60 days of service of the notice, an answer in writing under oath or affirmation showing cause why the certificate, document, or record should not be canceled, that he may appear in person before a naturalization examiner in support of, or in lieu of his written answer, and that he may have present at that time, without expense to the Government, an attorney or representative qualified under Part 292 of this chapter. In such proceedings the person shall be known as the respondent.

[29 FR 5511, Apr. 24, 1964, as amended at 37 FR 2767, Feb. 5, 1972]

§ 342.2 Service of notice.

(a) *Service.* The notice required by § 342.1 shall be served personally by an employee of the Government by delivery to the respondent, or by delivery to a person of suitable age and discretion at the respondent's dwelling house or usual place of abode, or by mailing to the respondent's last known address by registered or certified mail, return receipt requested.

(b) *Proof of Service.* The post office return receipt, or the certificate of the employee serving the notice by personal delivery, setting forth the date and manner of service, shall constitute proof of service. In the case of a mentally incompetent respondent or a child under 14 years of age, service shall be made upon his guardian, near relative or friend and the person so served shall be permitted to appear on behalf of the respondent.

[29 FR 5511, Apr. 24, 1964]

§ 342.3 Allegations admitted; no answer filed; no personal appearance requested.

If the answer admits all material allegations in the notice, or if no answer is filed within the 60-day period or any extension thereof and no personal appearance is requested within such period or periods, it shall be deemed to authorize the district director, without further notice to respondent, to find the facts to be as alleged in the notice and to cancel the certificate, document, or record. No appeal shall lie from such decision. Written notice of the decision shall be served upon the respondent with demand for surrender of the certificate, document, or record forthwith.

§ 342.4 Answer asserting defense; personal appearance requested.

If the respondent files an answer within the prescribed period asserting a defense to the allegations in the notice, or requests a personal appearance, with or without an answer, the district director shall designate a naturalization examiner to consider the case. The respondent shall be notified that he may appear in person or through counsel with any witnesses and evidence in defense of the allegations, and shall be informed of the date, time, and place for such appearance.

§ 342.5 Conduct of examination.

(a) *Authority of naturalization examiner.* The naturalization examiner assigned to consider the case shall have authority to administer oaths or affirmations to respondent and witnesses, issue subpoenas, present and receive evidence, rule upon offers of proof, take or cause depositions or interrogatories to be taken, regulate the course of the examination, take testimony of respondent and witnesses, grant continuances, consider and rule upon objections to the introduction of evidence, make recommendations to the district director as to whether cancellation shall be ordered or the proceedings terminated, and to take any other action as may be appropriate to the conduct and disposition of the case.

(b) *Assignment of additional officer.* The district director may, in his discretion, assign an officer of the Service to examine and cross-examine the respondent and witnesses and to present evidence pertinent to the case. The naturalization examiner designated under § 342.4 may take such part in the proceedings as he may deem necessary.

(c) *Examination.* The naturalization examiner designated under § 342.4 shall, prior to commencement of the examination, make known to the respondent his official capacity and that of any officer assigned pursuant to paragraph (b) of this section, the nature of the proceedings, his right to representation by counsel, to examine or object to evidence against him, to present evidence in his own behalf, to cross-examine witnesses presented by the Government, and shall read the allegations in the notice to respondent and, if necessary, explain them to him. The respondent shall be asked whether he admits or denies the material allegations in the notice, or any of them, and whether he concedes illegality or fraud. If respondent admits all the material allegations and that the certificate, document, or record was procured by fraud or illegality, and no issue of law or fact remains, the naturalization examiner may determine that fraud or illegality has been established on the basis of the respondent's admissions. The allegations in the notice shall be taken as admitted if respondent, without reasonable cause, fails or refuses to attend or remain in attendance at the examination. The examination shall be recorded verbatim except for statements made off the record with the permission of the naturalization examiner.

(d) *Prior statements.* The naturalization examiner assigned to consider the case may receive in evidence any oral or written statement which is material and relevant to any issue in the case previously made by the respondent or by any other person during any investigation, examination, hearing, trial, proceeding, or interrogation.

[28 FR 209, Jan. 9, 1963, as amended at 32 FR 3340, Feb. 28, 1967]

§ 342.6 Depositions.

Upon good cause shown, the testimony of any witness may be taken by depositions, either orally or upon written interrogatories before a person having authority to administer oaths (affirmations), as may be designated by the naturalization examiner.

[37 FR 2767, Feb. 5, 1972]

§ 342.7 Report and recommendation.

The naturalization examiner shall prepare a report summarizing the evidence, discussing the applicable law, and containing his findings and recommendations. The record, including the report and recommendation, shall be forwarded to the district director, who shall sign the report, either approving or disapproving the recommendation. If the decision of the district director is that the proceedings be terminated, the respondent shall be so informed.

§ 342.8 Appeals.

Should the district director find that the certificate, document, or record was fraudulently or illegally obtained, he shall enter an order that it be cancelled and the certificate or document surrendered to the Service forthwith. Written notification of such action shall be given the respondent, with a copy of the decision, findings and decision of the district director, and he shall be informed of his right of appeal in accordance with the provisions of Part 103 of this chapter.

§ 342.9 Notice re 18 U.S.C. 1428.

The notice to surrender a cancelled certificate of citizenship or copy thereof, prescribed by section 1428 of Title 18 of the United States Code, shall be given by the district director in whose district the person who has possession or control of such document resides.

[28 FR 9282, Aug. 23, 1963]

PART 343—CERTIFICATE OF NATURALIZATION OR REPATRIATION; PERSONS WHO RESUMED CITIZENSHIP UNDER SECTION 323 OF THE NATIONALITY ACT OF 1940, AS AMENDED, OR SECTION 4 OF THE ACT OF JUNE 29, 1906

AUTHORITY: Secs. 103, 332, 343, 344, 405, 66 Stat. 173, 252, 263, 264, 280; 8 U.S.C. 1101, 1103, 1443, 1454, 1455.

§ 343.1 Application.

A person who lost citizenship of the United States incidental to service in one of the allied armies during World War I or II, or by voting in a political election in a country not at war with the United States during World War II, and who was naturalized under the provisions of section 323 of the Nationality Act of 1940, as amended, or a person who, before January 13, 1941, resumed United States citizenship under the twelfth subdivision of section 4 of the act of June 29, 1906, may obtain a certificate evidencing such citizenship by making application therefor on Form N-580. The applicant shall be required to appear in person before an assigned officer for interrogation under oath or affirmation upon the application. When the application is approved, a certificate of naturalization or repatriation shall be issued and delivered in person, in the United States only, upon the applicant's signed receipt therefor. If the application is denied, the applicant shall be notified of the reasons therefor and his right to appeal in accordance with the provisions of Part 103 of this chapter.

[23 FR 9125, Nov. 26, 1958, as amended at 32 FR 9635, July 4, 1967]

PART 343a—NATURALIZATION AND CITIZENSHIP PAPERS LOST, MUTILATED, OR DESTROYED; NEW CERTIFICATE IN CHANGED NAME; CERTIFIED COPY OF REPATRIATION PROCEEDINGS

Sec.

343a.1 Application for replacement of or for new naturalization or citizenship paper.
343a.2 Return or replacement of surrendered certificate of naturalization or citizenship.

AUTHORITY: Secs. 103, 324, 332, 343, 344, 405, 66 Stat. 173, 246, 247, 252, 263, 264, 265, 280; 8 U.S.C. 1101 note, 1103, 1435, 1443, 1454, 1455

§ 343a.1 Application for replacement of or for new naturalization or citizenship paper.

(a) *Lost, mutilated, or destroyed naturalization papers.* A person whose declaration of intention, certificate of naturalization, citizenship, or repatriation, or whose certified copy of proceedings under the act of June 25, 1936, as amended, or under section 317(b) of the Nationality Act of 1940, or under section 324(c) of the Immigration and Nationality Act, or under the provisions of any private law, has been lost, mutilated, or destroyed, shall apply on Form N-565 for a new paper in lieu thereof.

(b) *New certificate in changed name.* A naturalized citizen whose name has been changed after naturalization by order of court or by marriage shall apply on Form N-565 for a new certificate of naturalization, or of citizenship, in the changed name.

(c) *Disposition.* The applicant shall be required to appear in person before an assigned officer for interrogation under oath or affirmation upon the application. If an application for a new certificate of naturalization, citizenship, or repatriation is approved, the new certificate shall be issued and delivered in person upon the applicant's signed receipt therefor. When an application for a new declaration of intention is approved the new declaration of intention shall be issued and the original delivered to the applicant upon his signed receipt therefor. If an application for a new certified copy of the proceedings under the Act of June 25, 1936, as amended, or under section 317(b) of the Nationality Act of 1940, or under section 324(c) of the Immigration and Nationality Act, or under the provisions of any private law is approved, there shall be issued a certified positive photocopy of the record of the proceedings filed with the Service. When subsequent to the naturalization or repatriation the applicant's name has been changed by marriage, the certification of the positive photocopy shall show both the name in which the proceedings were had and the changed name. The new certified copy shall be personally delivered to the applicant, upon his signed receipt therefor. If the application is denied, the applicant shall be notified of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter.

[23 FR 9125, Nov. 26, 1958, as amended at 32 FR 9635, July 7, 1967]

§ 343a.2 Return or replacement of surrendered certificate of naturalization or citizenship.

A certificate of naturalization or citizenship in a service file which was surrendered on a finding that loss of U.S. nationality had occurred directly or through a parent by reason of section 404 (b) or (c) of the Nationality Act of 1940 or section 352 of the Immigration and Nationality Act and which finding is no longer valid in view of "Schneider v. Rusk," 377 U.S. 163, or a certificate of naturalization or citizenship in a service file which was surrendered on a finding that loss of U.S. nationality had occurred pursuant to section 401(e) of the Nationality Act of 1940 or section 349(a) (5) of the Immigration and Nationality Act and which finding is no longer valid in view of "Afroyim v. Rusk," 387 U.S. 253, or a certificate of citizenship in a service file which was surrendered on a finding that loss of U.S. nationality had occurred pursuant to section 301(b) of the Immigration and Nationality Act, the provisions of which were extended by section 301(c) of the same Act to persons born after May 24, 1934, and which finding is no longer valid in view of the amendment to section 301(b) on October 27, 1972, Public Law 92-584, may be returned to the person to whom it was issued, notwithstanding the fact that he has since been naturalized or repatriated in the United States or abroad. If, after having been surrendered to the Department of State or to this Service, the certificate has been lost, mutilated, or destroyed as a result of either Service action or the action of that Department, a replacement certificate may be issued in the name shown in the surrendered certificate without fee and without requiring the submission of Form N-565. A surrendered certificate shall not be regarded as mutilated and a replacement shall not be issued solely because of holes made in it to accommodate an Acco fastener, unless the citizen declines to accept the return of the surrendered certificate in that condition and insists upon issuance of a replacement. When it is desired that the replacement certificate be furnished in a name other than the one shown in the surrendered certificate, the regular application procedure with payment of fee must be followed. The naturalized person shall be required to appear in person, if within the United States, before an assigned officer for interrogation under oath or affirmation upon the request for return of the certificate.

[32 FR 9635, July 4, 1967, as amended at 33 FR 4562, Mar. 15, 1968; 38 FR 5997, Mar. 6, 1973]

PART 343b—SPECIAL CERTIFICATE OF NATURALIZATION FOR RECOGNITION BY A FOREIGN STATE

Sec.

343b.1 Application.
343b.2 Number of applications required.
343b.3 Interrogation.
343b.4 Applicant outside of United States.
343b.5 Verification of naturalization.
343b.11 Disposition of application.

AUTHORITY: Secs. 103, 332, 343, 344, 66 Stat. 173, 252, 263, 264; 8 U.S.C. 1103, 1443, 1454, 1455.

§ 343b.1 Application.

A naturalized citizen who desires to obtain recognition as a citizen of the United States by a foreign state shall submit an application on Form N-577. He shall not be furnished with verification of his naturalization for such purpose in any other way. An applicant who is a claimant against a foreign government for property damage pursuant to the provisions of a peace treaty shall not be requested to furnish the name, official title, and address of a foreign official unless such information is available when the investigation of the applicant is conducted. The applicant shall be required to appear in person before an assigned officer for interrogation under oath or affirmation upon the application.

[32 FR 9636, July 4, 1967]

§ 343b.2 Number of applications required.

A special certificate of naturalization is delivered to one foreign government official only. An applicant who desires recognition as a U.S. citizen by more than one foreign official, whether in the same country or not, must file a separate application for each certificate required.

[32 FR 9636, July 4, 1967]

§ 343b.3 Interrogation.

When Form N-577 presents a prima facie case, it shall be forwarded to the district director, without first interrogating the applicant, for issuance of the certificate. Interrogation of the applicant shall be conducted before the application is forwarded if he appears in person to file the application or if it is necessary in order to properly adjudicate the case. In that event the officer interviewing the applicant will complete the report on page 2 of Form N-577 before transmitting the application to the district director. In all other cases the interview shall take place at any time before the certificate is transmitted to the State Department (unless the applicant is abroad) and the report completed after the interview.

[32 FR 9636, July 4, 1967]

§ 343b.4 Applicant outside of United States.

If the application is received by a Service officer stationed outside the United States, he shall, when practicable, interrogate the applicant before the application is forwarded to the district director in the United States having jurisdiction over the applicant's place of residence for issuance of the certificate. When such interrogation is not practicable, or is not conducted because the application is submitted directly to the Commissioner or a district director of the Service in the United States, the certificate may nevertheless be issued and the recommendation conditioned upon satisfactory interrogation by a State Department representative. When forwarding the certificate in such a case, the Secretary of State shall be informed that the applicant has not been interviewed, and requested to have his representative abroad interview the applicant regarding identity and possible expatriation. If identity is not established or if expatriation has occurred, the request shall be made that the certificate be returned to the Service.

[37 FR 7584, Apr. 18, 1972]

§ 343b.5 Verification of naturalization.

The application shall not be granted without first obtaining verification of the applicant's naturalization.

[32 FR 9636, July 4, 1967]

§ 343b.11 Disposition of application.

(a) *Issuance of certificate.* If the application is granted, a special certificate of naturalization of Form N-578 shall be issued by the district director and forwarded to the Secretary of State for transmission to the proper authority of the foreign state. The district director shall forward the original certificate by letter, in triplicate, to the Secretary of State, Attention: Office of Citizens' Consular Service, Department of State, Washington, D.C. 20520; forward the application and the duplicate certificate to the official Service file, and send Form N-558 to the applicant.

(b) *Application denied.* If the application is denied, the applicant shall be notified of the reasons therefor and of his right to appeal in accordance with the provisions of Part 103 of this chapter.

[23 FR 9126, Nov. 26, 1958 and 32 FR 9636, July 4, 1967, as amended at 36 FR 11636, June 17, 1971; 45 FR 38340, June 9, 1980]

PART 343c—CERTIFICATIONS FROM RECORDS

AUTHORITY: 5 U.S.C. 552 (80 Stat. 383); as amended by Pub. L. 93-502 (88 Stat. 1561); sec. 103 Immigration and Nationality Act (66 Stat. 173; 8 U.S.C. 1103).

§ 343c.1 Application for certification of naturalization record of court or certificate of naturalization or citizenship.

An application for certification of a naturalization record of any court, or of any part thereof, or of any certificate of naturalization, repatriation, or citizenship, under section 343(e) of the Act for use in complying with any statute, Federal or State, or in any judicial proceeding, shall be made on Form G-641.

[40 FR 50703, Oct. 31, 1975]

PART 344—FEES COLLECTED BY CLERKS OF COURT

Sec.
344.1 Division of the year for accounting for naturalization fees.
344.2 Fees in United States courts, remittance.
344.3 Fees in other than United States courts; remittance.
344.4 Fees in the District Courts at the Virgin Islands and Guam: remittance.
Sec.
344.5 Time for report of and accounting for fees collected.

AUTHORITY: Secs. 103, 332, 344, 66 Stat. 173, 252, 264; 8 U.S.C. 1103, 1443, 1455.

§ 344.1 Division of the year for accounting for naturalization fees.

For the purpose of accounting for and reporting naturalization fees quarterly by clerks of courts, the fiscal year shall end on September 30 of any given calendar year and shall be devided as follows: The first quarter shall end December 31; the second quarter ends March 31; the third quarter ends June 30; and the fourth quarter ends September 30.

[41 FR 27313, July 2, 1976]

§ 344.2 Fees in United States courts; remittance.

All fees collected for declarations of intention and petitions for naturalization by clerks of United States district courts (except in the District Courts of Guam and the Virgin Islands of the United States) shall be forwarded quarterly by a remittance payable to the order of the "Immigration and Naturalization Service, Department of Justice," to the regional commissioner having administrative jurisdiction over the place in which the court is located.

[26 FR 4606, May 26, 1961]

§ 344.3 Fees in other than United States courts; remittance.

Clerks of courts other than United States courts shall similarly remit to the regional commissioner in the manner provided in § 344.2 one-half of all fees up to the sum of $40,000 and all fees in excess of $40,000, collected for declarations of intention and petitions for naturalization in any fiscal year.

[47 FR 10779, Mar. 12, 1982]

§ 344.4 Fees in the District Courts at the Virgin Islands and Guam: remittance.

All fees collected for declarations of intention and petitions for naturalization by the clerk of the District Court of the Virgin Islands of the United States shall be paid into the Treasury of Virgin Islands. All such fees collected by the clerk of the District Court of Guam shall be paid into the Treasury of Guam. However, such clerks shall report the fees collected to the regional commissioner having administrative jurisdiction over the place in which the court is located, in accordance with § 344.5

[22 FR 9827, Dec. 6, 1957]

§ 344.5 Time for report of and accounting for fees collected.

The accounting for naturalization fees collected and the payment of fees turned over to the regional commissioner as provided in § § 344.2, 344.3 and 344.4 shall be made on Form N-7 within thirty days from the close of each quarter of each and every fiscal year.

[22 FR 9827, Dec. 6, 1957]

PART 349—LOSS OF NATIONALITY

AUTHORITY: Sec. 103, 66 Stat. 173; 8 U.S.C. 1103. Interprets or applies 401(i), 54 Stat. 1169; 8 U.S.C. 801, 1946 ed.

§ 349.1 Japanese renunciation of nationality.

A Japanese who renounced United States nationality pursuant to the provisions of section 401(i), Nationality Act of 1940, who claims that his renunciation is void, shall complete Form N-576, Supplemental Affidavit to be Submitted with Applications of Japanese Renunciants. The affidavit shall be submitted to the Assistant Attorney General, Civil Division, Department of Justice, Washington, D.C. 20530, with a covering letter requesting a determination of the validity of the renunciation.

[32 FR 9636, July 4, 1967]

PART 499—NATIONALITY FORMS

AUTHORITY: Sec. 103 of the Immigration and Nationality Act, as amended; 8 U.S.C. 1103.

§ 499.1 Prescribed forms.

The forms listed below are hereby prescribed for use in compliance with the provisions of this Subchapter C. To the maximum extent feasible the forms used should bear the edition date shown or a subsequent edition date.

Form No., Title and Description

G-639 (6-12-82)—Freedom of Information/Privacy Act Request.

G-641 (5-5-83)—Application for Verification of Information from Immigration and Naturalization Records.

G-652 (2-1-78)—Affidavit of Identity.

G-658 (11-1-75)—Record of Information Disclosure (Privacy Act).

I-138 (11-5-70)—Subpoena.

N-3 (1-30-83)—Requisition for Forms and Binders.

N-4 (12-31-82)—Monthly Report—Naturalization Papers Forwarded.

N-5 (12-24-52)—Continuation Sheet of Monthly Report—Naturalization Papers Forwarded.

N-7 (5-5-83)—Quarterly Abstract of Collections of Naturalization Fees.

N-12 (1-30-82)—Penalty Envelope (to be addressed to any office of Service).

N-13 (4-1-81)—Penalty Envelope (Large—to be addressed to any office of Service).

N-300 (5-5-83)—Application to File Declaration of Intention.

N-305 (5-5-83)—Form Letter Notifying Alien that Form N-300 has been Forwarded to the Clerk of the Court.

N-315 (3-1-80)—Declaration of Intention.

N-400 (5-5-83)—Application to File Petition for Naturalization.

N-400B (1-1-66)—Supplement to Application to File Petition for Naturalizaton (by a seaman, under Sec. 330 of the Immigration and Nationality Act).

N-402 (4-15-82)—Application to File Petition for Naturalization in Behalf of a Child (under Sec. 322, Immigration and Nationality Act).

N-404 (8-1-65)—Request for Withdrawal of Petition for Naturalization.

N-405 (4-1-82)—Petition for Naturalization (under general provisions of the Immigration and Nationality Act).

N-407 (3-25-82)—Petition for Naturalization (in behalf of a child, under Sec. 322, Immigration and Nationality Act).

N-410 (5-5-83)—Motion for Amendment of Petition (application).

N-414 (12-15-44)—Acknowledgement of Filing Petition for Naturalization.

N-414a (7-15-65)—Acknowledgement of Filing Petition for Naturalization and Index Card.

N-425 (2-12-82)—Notice to Petitioner of Proposed Recommendation of Denial of Petition for Naturalization.

N-426 (5-12-77)—Certification of Military or Naval Service.

N-445 (4-15-82)—Notice to Petitioner to Appear in Court for final Hearing on Petition for Naturalization, and Questionnaire to be Submitted by Petitioner at the Final Hearing.

N-445B (4-20-82)—Notice to Petitioner to Appear in Court for Final Hearing on Petition for Naturalization Filed in Behalf of his Natural or Adopted Child, and Questionnaire to be Submitted by Petitioner at the Final Hearing.

N-455 (5-5-83)—Application for Transfer of Petition for Naturalization.

N-458 (1-30-83)—Application to Correct Certificate of Naturalization.

N-459 (12-15-58)—Authorization to Clerk of Court to Correct Certificate of Naturalization.

N-470 (5-5-83)—Application to Preserve Residence for Naturalization Purposes (under Sec. 316(b) or 317, Immigration and Nationality Act).

N-472 (4-5-82)—Approval of Application to Preserve Residence for Naturalization Purposes.

N-480 (2-5-68)—Naturalization Petitions Recommended to be Granted (and) Order of Court Granting Petitions for Naturalization.

N-481 (9-20-67)—Naturalization Petitions Recommended to be Granted (Continuation Sheet).

N-484 (2-5-68)—Naturalization Petitions Recommended to be Denied (and) Order of Court Denying Petitions for Naturalization.

N-485 (2-5-68)—Naturalization Petitions Recommended to be Granted (on behalf of children) (and) Order of Court Granting Petitions for Naturalization.

N-550 (3-1-80)—Certificate of Naturalization.

N-565 (5-5-83)—Application for New Naturalization or Citizenship Paper.

N-577 (5-5-83)—Application for a Special Certificate of Naturalization to Obtain Recognition as a Citizen of the United States by a Foreign State.

N-578 (10-3-62)—Special Certificate of Naturalization.

N-600 (5-5-82)—Application for Certificate of Citizenship.

[49 FR 7104, Feb. 27, 1984]

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